81-6912

Case No. A-844

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IN THE SUPREME COURT OF THE UNITED STATES

Term, 1982

Supreme Court, U.S.
FILED
JUN 11 1982
Alexander L. Stevas, Clerk

DAVID J. SCHOLL, APPELLANT

v.

RUDOLPH ANSELMI, et al

ON APPEAL FROM THE

SUPREME COURT OF THE STATE OF WYOMING

JURISDICTIONAL STATEMENT

David J. Scholl
Appellant acting
Pro Se

P.O. Box 2832
Jackson, Wyoming
83001

QUESTIONS PRESENTED ON APPEAL

I. Whether the Appellees may require, as a condition for obtaining a Wyoming Driver's License, that all applicants sign an "INFORMATION PRACTICE STATEMENT" which is a waiver of privacy giving the Appellees permanent, irrevocable permission to obtain all personal information from any source which they wish to obtain.

II. Whether due process of law was denied when the rule requiring the signing of the "INFORMATION PRACTICE STATEMENT" was imposed without following the rule making procedures required by the Wyoming Administrative Procedures Act.

III. Whether due process of law was denied when the Appellees failed to provide the Appellant a hearing, for a period of over one and one-half years, to review the denial of his license application, as required by the Wyoming Administrative Procedures Act.

IV. Whether the facts in the case are sufficient to warrant the award of general damages, and whether the signed, sworn, and notarized statement by the Appellant concerning the harm caused by the Appellees refusal to issue the license was sufficient and proper to warrant the award of special damages.

V. Whether a litigant in a civil rights suit acting pro se is entitled to the award of a reasonable attorney's fees under 42 USC 1988.

PARTIES TO THE PROCEEDINGS

All parties to these proceedings are listed in the caption to the case.

APPELLANT:

DAVID J. SCHOLL

APPELLEES:

RUDOLPH ANSELMI
R.A. HAKALA
DORAN LUMMIS

The above as individuals and as:
THE WYOMING TAX COMMISSION

and as APPELLEE:

DANIEL C. LEACH, JR.
as and individual and as the:
DIRECTOR, MOTOR VEHICLE DIVISION,
DEPARTMENT OF REVENUE AND TAXATION, STATE OF WYOMING

The Appellees are represented by:

Office of the Attorney General
State of Wyoming
State Capitol
Cheyenne, Wyoming
82001

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CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS INVOLVED IN THE CASE.

TABLE OF AUTHORITIES

Other than the references to opinions in the courts below, which are listed on page 2; and the Constitutional Provisions, Statutes, and Regulations Involved, which are listed on page 4, this document cites as authorities:

42 USC 1983 on page 3

42 USC 1988 on pages 3,6, and 8

28 USC 1257 on page 3

REFERENCES TO OPINIONS IN THE COURTS BELOW

Letter Opinion of Judge Joseph Maier, dated May 1, 1981
First Judicial District of the State of Wyoming
Docket #91-413

Judgement and Order of Allowance of Peremptory Writ of Mandamus
First District Court, State of Wyoming
June 24, 1981, Docket # 91-413

Letter of Judge Maier, dated July 8, 1981
First District Court, State of Wyoming
docket # 91-413

Opinion of the Supreme Court of the State of Wyoming
February 11, 1982
Docket No. 5564

Note: There were no formal hearings and decisions by the administrative agencies involved. This is one of the issues in this case.

GROUNDS FOR JURISDICTION

1. This is an appeal from a decision by the Wyoming Supreme Court. That decision upheld a ruling by the trial court, which was the First District Court of the State of Wyoming on a petition for Writ of Mandamus.

2. The judgement by the First Distrcit Court of the State of Wyoming was issued on June 24th, 1981. That Judgement was entitled JUDGEMENT AND ORDER OF ALLOWANCE OF PEREMPTORY WRIT OF MANDAMUS. That judgement followed letter opinion by the judge of the First District Court of the State of Wyoming dated May 1, 1981.

The decision by the Wyoming Supreme Court upholding the lower court was issued on February 11, 1982.

Notice of Appeal was filed March 30, 1982 with the Clerks of both the Wyoming Supreme Court and the First District Court of the State of Wyoming.

3. The United States Supreme Court has jurisdiction in this case under the provisions of 42 USC 1983; 42 USC 1988; and 28 USC 1257.

CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS INVOLVED

Constitution of the United States
Amendments IV, V, IX, XIV

Constitution of the State of Wyoming
Article 1, Sections 4,6,7,11,36, and 37

42 USC 1983

42 USC 1988 (With Legislative History of PL 94-557 (USCCaAN1976 p5908 ff)

The Privacy Act of 1974
5 USCS 552a page 178

Wyoming Administrative Procedures Act
W.S. 9-4-101 through 9-4-114

Wyoming Driver's License Act
W.S. 31-7-101 through 31-7-115

Wyoming Motor Vehicle Division Form # MDVL-705
(Note: This has not been adopted as a formal rule, but is enforced as a de facto rule - which is one of the issues in this case.)

Wyoming Code of Civil Procedures
W.S. 1-1-101

STATEMENT OF THE CASE

The Appellant had been licensed to drive in the state of Wyoming. As required, he went to renew his driver's license when it was to expire.

Appellant passed all tests required for the issuance of the license. However, the Appellant refused to disclose his Social Security number and objected to the "INFORMATION PRACTICE STATEMENT" - a waiver of privacy - on the license application form.

The Appellant informed the Appellee's agent that he objected on religious and consitutitonal grounds to the two requirements. The agent then refused to issue the license. The Appellant contactd Mr. Leach, an Appellee, directly, explaining his objections and requesting that the license be issued. Mr. Leach refused.

For a period of over one and one-half years, the Appellant repeatedly contacted the Appellees, by letter, by phone, and by personal contact, to demand issuance of a license and a review of the denial of his application. The Appellees refused to grant the license, and failed to hold a hearing on the matter, despite the requirements of the Wyoming Administrative Procedures Act.

Appellant filed for a Writ of Mandamus in the First District Court of the State of Wyoming. The Appellant asserted to that court that the rules were a violation of federal and state constitutional rights, and that the Appellees had denied him due process both in the method of adopting the rules and by their failure to hold administrative hearing on the Appellants appeals to the license denial. In a sworn, notarized Petition for Writ of Mandamus, the Appellant explicitly detailed the the damages caused by the Appellees refusal to issue the license.

The First District Court of the State of Wyoming ruled

The First District Court of the State of Wyoming ruled that the Appellant was entitled to the license, that the Appellees did not have statutory authority to require disclosure of his social security number, but that it could require the waiver of privacy and that the Appellant was not entitled to award of any damages.

The Appellant appealled the decision by that court to the Wyoming Supreme Court, requresting that the Wyoming Supreme Court find that the waiver was unconstitutionally over-braod and a violation of rights to privacy, that the Appellant was entitled to award of damages, and that Federal law (42 USC 1988) provided for award of reasonable attorney's fees for litigants who substantially prevail in a civil rights case - including pro se litigants.

The Wyoming Supreme Court upheld the decision of the First District Court of the State of Wyoming.

STATEMENT IN SUPPORT OF PLENARY CONSIDERATION

There are several issues of major import involved in this case.

First, the Appellees have claimed, and the Wyoming Courts have supported the claim, that the Appellees may require a permanent and extremely broad, irrevocable waiver of the right to privacy in order to obtain a driver's licesne from the State of Wyoming. In the Wyoming courts the Appellees have admitted that such a waiver would allow them to obtain without notice and at will information as personal and confidential as medical and psychological records. They also do not deny that the waiver would allow them to obtain, again without notice, without court order,and at will, information from insurance records, bank records, and any other source.

Such a requirement is blatantly over-broad and a violation of constitutionally protected rights to privacy.

Second, The United States Supreme Court has on several occassions pointed out the necessity to award damages in cases in which constitutional rights were violated, in order to protect those rights by discouraging their infringement and by encouraging citizens to seek the protection of rights through the courts. By refusing to award any damages in this case, the Wyoming Courts have acted contrary to the expressed intent of the United States Supreme Court.

Third, it is imperative that the procedures for adopting rules with the force of law be followed closely to prevent arbitrary rule making and usurption of legislative powers. In this case the Appellees admitted that they did not follow the procedures as required by Wyoming law. Nevertheless, the Wyoming Courts ignored that fact - although agreeing that it was a fact - and ruled that the Appellees' rule was enforceable.

Fourth, it is imperative that rights to administrative hearings be carefully protected. In this case the Appellees failed, despite repeated demands from the Appellant, to review his objections to their rules and to their denial of a driver's license. Wyoming law clearly requires such hearings. Nevertheless, the Wyoming courts ignored the failure to hold such hearings.

Fifth, Pro Se litigants seeking redress of violations of constitutional rights deserve the encouragement to seek such redress - encouragement which was the intent of 42 USC 1988. The Federal and State courts are widely divided on the issue of awarding reasonable attorenys' fees to pro se litigants under 42 USC 1988. It is imperative that the United States Supreme Court make a definitive ruling on the issue in order to provide guidance to the courts below.

APPENDICES A

OPINIONS OF THE COURTS BELOW

IN THE SUPREME COURT, STATE OF WYOMING

OCTOBER TERM, A.D. 1981

February 11, 1982

THE STATE OF WYOMING, ex rel. DAVID J. SCHOLL, Appellant (Relator), v. RUDOLPH ANSELMI, R.A. HAKALA, and DORAN LUMMIS, as individuals and as The Wyoming Tax Commission, and DANIEL C. LEACH, JR., as an individual and as Director, Motor Vehicle Division, Department of Revenue and Taxation, State of Wyoming, Appellees (Respondents).	)	No. 5564

Appeal from the District Court of Laramie County, the Honorable Joseph F. Maier, Judge.

David J. Scholl, appellant, pro se.

Steven F. Freudenthal, Attorney General; Ron Arnold, Assistant Attorney General; and Randall T. Cox, Assistant Attorney General, Cheyenne, for appellees.

Before ROSE, C.J., and RAPER, THOMAS, ROONEY and BROWN, JJ.

NOTICE: This opinion is subject to formal revision before publication in Pacific Reporter Second. Readers are requested to notify the Clerk of the Supreme Court, Supreme Court Building, Cheyenne, Wyoming 82001 of any typographical or other formal errors, in order that corrections may be made before final publication in the permanent volume.

BROWN, Justice.

This appeal is from that portion of a judgment and order of the district court dated June 24, 1981, denying appellant damages and attorney fees.

We will affirm.

Appellant specifies the issues: 1/

"1. Is the rule requiring signing of the 'Information Practice Statement' on appellees [sic] form 'MVDL-705 (2-80)' authorized, implicitly or explicitly, by Wyoming Statutes?

"2. If authorized by statutes, is the requirement that such a statement must be signed in order to obtain a Wyoming Driver's License a 'rule' under the definition of the Wyoming Administrative Procedure Act? If so, may the rule be imposed without adoption in accordance with the Wyoming Administrative Procedure Act?

"3. If authorized and properly adopted as a rule, is the 'Information Practice Statement' an unconstitutionally overbroad waiver of rights to privacy and confidentiality?

1/ Appellees characterize the issues slightly different ly:

"1. Whether, under the facts as stated, the Appellant may obtain an award of damages, despite his complete failure to offer evidence of damages to the District Court.

"2. Whether any rights protected by the U.S. Constitution and federal statutes were diminished by the Appellees' acts regarding Appellant.

"3. Whether sovereign and official immunity bar a recovery of damages by Appellant in light of his non-compliance with the Wyoming Governmental Claims Act and statutes of limitations.

"4. Whether the District Court erred in denying mandamus relief with respect to the information practices of Appellees.

"5. Whether the District Court erred in denying Appellant attorney fees."

> 4. Is appellant entitled only to court costs? Or his [sic] he entitled to his costs seeking administrative remedy, his costs in preparing and bringing the action, and compensation for damages incurred due to Appellees [sic] actions and failures to act, including punitive damages?"

Appellant David J. Scholl applied for renewal of his Wyoming driver's license on or about December 13, 1978. The local Motor Vehicle Division officer requested that appellant complete the standard license application form, but appellant refused to supply his social security number. The officer refused to issue appellant a driver's license because the form was not complete; however, appellant successfully completed all other requirements for issuance of a driver's license, including the examination.

Appellant also protested the requirement that license applicants must sign an "Information Practices Statement," which is part of the application for driver's license form MVDL (11-77). (See Appendix.) Appellant signed the Information Practices Statement on the date of his application, but added the legend, "I do not waive any Constitutional rights."

Appellant communicated to the Motor Vehicle Division and to the members of the Wyoming Department of Revenue and Taxation his reasons for refusing to disclose his social security number, which reasons are religious. The Motor Vehicle Division Director and the Wyoming Department of Revenue and Taxation upheld the action of the field officer in refusing to renew appellant's driver's license.

Appellant then applied to the district court for a writ of mandamus to compel the Motor Vehicle Division to issue a license to him without disclosure of the social security number. He also argued in the petition that signing of the Information Practices Statement by license applicants is not authorized by law and constitutes an invasion of constitutionally protected rights of privacy. The Motor Vehicle Division agreed to issue a license to appellant pending resolution of the matter in district court. The district court issued an order on July 11, 1980, permitting appellant to operate a motor vehicle pending the final determination of the matter on the merits. Appellant did not have a valid Wyoming driver's license during the interim period from December of 1978 to July 11, 1980.

Appellant filed his Amended Petition for Writ of Mandamus on July 7, 1980, in which he asked for relief in several forms, including:

> 1. That the Motor Vehicle Division issue a renewed license to petitioner;

2. That the Division invalidate and remove from its files all Information Practices Statements signed by applicants for licenses, and that subsequent applicants must be informed that they are not required to sign the Information Practices Statement;

3. That the the Division cease requiring applicants to supply social security numbers on license application forms;

4. That the Division reimburse Petitioner for costs of bringing the action and for damages, including $150.00 for the costs of "seeking remedy prior to this action," $3,000.00 for "reasonable attorney's fees and for legal research," $5,000.00 "to reimburse Petitioner for income lost due to time spent seeking remedy and bringing this action," $10.00 per day from the day application was made for license for "inconvenience and added costs to Petitioner caused by Respondent's failure to renew said license," and $30,000.00 "punitive damages," and that the respondents be held collectively and severally and individually for these costs and "damages."

Appellant and an assistant attorney general entered into a stipulation and submitted the matter to the district court on the stipulation and briefs without oral argument. The Stipulation was as follows:

"1. That on or about December 13, 1978 David J. Scholl did apply for renewal of his Wyoming Driver's License at the Buffalo office of the Department of Motor Vehicles.

"2. That Mr. Scholl did pass all required examinations for renewal of said license.

"3. That Mr. Scholl's driving record shows him to be in good standing and eligible for renewal of his license.

"4. That Mr. Scholl objected, and still objects, to the use of a Social Security number on the application and license, and to the signing of a waiver which authorizes the Department to obtain information from any source which the Department believes may relate to driving records.

"5. That the Department's agent refused to accept the application and issue a new license

without the Social Security number and such a signed waiver.

"6. That the agent's actions were based on a rule, regulation, or memo issued by the department.

"7. That Mr. Scholl has made numerous and repeated efforts to have his license renewed, including telephone calls and letters to the Dirctor [sic] of the department, to each of the Tax Commissioners, and to the Attorney General's Office. (See copies of letters on file in the First District Court.)

"8. That as late as June 25, 1980, no copy of the rule, regulation, memo, or interpretation of the law which the department invoke [sic] against Mr. Scholl to compel disclosure of his Social Security number and signing of a waiver in order to renew his license was on file in the Office of the Secretary of State.

"9. That each of the defendants is aware, or should be aware, of Mr. Scholl's objections based on religious beliefs and assertion of Constitutional Rights, as well as statutory procedures.

"10. That the department continues to refuse to issue a renewed license to Mr. Scholl without use of the Social Security number and signing of the above mentioned waiver."2/

The district court concluded in its decision letter that the Motor Vehicle Division lacked statutory or rule authority to require disclosure of social security numbers by license applicants and that the writ should be issued. The appellant and State could not agree on the form of the writ because of appellant's damage and attorney fee demand.

The district court entered its order on June 24, 1981, allowing a peremptory writ of mandamus directing respondents to issue a driver's license to appellant without his social security number

---

2/ Apparently the stipulation did not accurately reflect the Motor Vehicle Department's action with respect to the Information Practices Statement. Appellant did sign the statement on December 13, 1978; therefore, the license was not denied because of his failure to sign the statement as may have been suggested by the Stipulation. Appellees took the necessary steps to make this correction in the record on appeal.

on the license. It denied appellant's claim for damages, but allowed him to recover his costs. The court also found that the Motor Vehicle Division has statutory authority to require license applicants to sign the Information Practices Statement.

Appellant filed a timely notice of appeal.

I

In his brief appellant addresses numerous issues in great detail. Appellee addresses these issues and raises other matters by way of defense, such as sovereign and official immunity, Wyoming governmental immunity, statute of limitations, filing of claims with the State Auditor, and others. In their briefs the parties discuss the requirement of social security number disclosure; however, appellant prevailed on that issue in the district court and the State has not appealed that ruling.

The issue raised by appellant regarding signing the Information Practices Statement is moot. Appellant signed the statement voluntarily when he applied for a license, although he noted that he was not waiving his constitutional rights. He does not claim that he was coerced. Further, he does not allege any damage resulting from signing the statement. The record does not indicate that the Motor Vehicle Division ever used this statement for improper purposes, or for any purpose. Appellant is apparently asking this Court to declare that he and other future driver's license applicants not be required to sign an Information Practices Statement. We decline to address that issue, if it is an issue, because our thoughts on that matter would only be advisory.

The consequences of an applicant's refusal to sign the Information Practices Statement have never been at issue in these proceedings. We believe that the only issue properly raised by appellant is the refusal of the district court to allow appellant damages and attorney fees.

II

Appellant alleges that he was damaged because appellees violated many of his United States constitutional rights. He cited specific constitutional provisions in his Petition for Writ of Mandamus. He did not mention 42 U.S.C.A. § 1988 (1981) in his Petition for a Writ of Mandamus, but does in his brief to this Court, attempting now to invoke that section as authority for his claim to damages. He also claimed that Wyoming constitutional and statutory rights were violated by appellees, and again directed the court's attention to specific constitutional and statutory provisions.

We need not address the propriety of appellant's action for damages. We will assume for purposes of this opinion that in a

proper case damages could be awarded, but this case should be decided on the narrow issue of proof of damages.

Appellant requested that this case be submitted to the district court on stipulated facts and briefs. Damages are not mentioned in the stipulation, and nothing is said about damages unless telephone calls made by appellant and letters written suggest some expense. However, the Stipulation did not indicate a dollar expense, nor did it say that he incurred any expense. Appellant did allege expenses and indicate a dollar figure in his Petition for a Writ of Mandamus, but that is pleading, not evidence. There was no testimony taken in this case and the only evidence before the district court was the parties' stipulation.

Appellant has entirely overlooked the necessity of proving damages. He apparently equates pleading damages with the proof of damages. We know of no cases nor statutes that permit damages based solely on an allegation of damages. Damages cannot be presumed. One who claims damages has the burden of proving them. 3/ Consequently, absent proof, a claim for damages fails. Quinlan v. Jones, 27 Wyo. 410, 198 P. 352 (1921). See also West's digest, § 163(1)(3) "Damages" for scores of cases supporting this fundamental principle:

> * * * * Generally speaking, the party who would lose if no evidence were presented as to an issue regarding damages is charged with the burden of proving that issue. As a rule, the burden of proof is upon the plaintiff to show the fact and extent of the injury and to show the amount and value of his damages, whether the action is for a breach of contract or for tort. In a damages action, where issue is taken the plaintiff must show not only that he suffered damage because of the wrongful act complained of, but also that it would not have been incurred except for the wrongful act of the defendant, if he would recover more than nominal damages. * * * * 22 Am.Jur. Damages § 296, p. 392 (1965).

Appellant's claim for damages must fail in the absence of any proof.

3/ There may be some exceptions to this abstract rule such as nominal damages, liquidated damages, damages provided for by statute, etc. However, appellant has not brought to our attention applicable exceptions, nor does he claim any exceptions from the general law. We have searched for an exception that might be applicable here, but know of none.

III

Appellant appeared pro se at all stages of this case. He nevertheless claims attorney fees in connection with the proceedings in the district court and on appeal. A flaw in appellant's theory is that he has not only failed to prove attorney fees, but does not even claim that he incurred such fees. Although he claims attorney fees, appellant is really claiming the value of his time in connection with this case. He does not indicate how much time he spent. Supplying that deficiency, however, would not enhance his cause.

The rule regarding attorney fees generally is set out in Alyeska Pipeline Service Company v. Wilderness Society, 421 U.S. 240, 95 S.Ct. 1612, 44 L.Ed.2d 141 (1975):

> "In the United States, the prevailing litigant is ordinarily not entitled to collect a reasonable attorneys' fee from the loser. We are asked to fashion a far-reaching exception to this 'American rule'; but having considered its origin and development, we are convinced that it would be inappropriate for the Judiciary, without legislative guidance, to reallocate the burdens of litigation in the manner and to the extent urged by respondents and approved by the Court of Appeals."

See also Downing v. Stiles, Wyo., 635 P.2d 808, 817 (1981).

Apparently appellant seeks to recover "attorney fees" for his suit, under 42 U.S.C.A. § 1988, supra, which provides in part:

> * * * * In any action or proceeding to enforce a provision of sections 1981, 1982, 1983, 1985, and 1986 of this title, title IX of Public Law 92-318, or title VI of the Civil Rights Act of 1964, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs."

The purpose of statutory provisions for attorney fees is to encourage those who otherwise could not afford legal counsel to hire professional assistance, rather than forego their "day in court." Appellant was not discouraged by a perceived lack of financial resources; he had his day in court by bringing the action pro se. The purpose of encouraging employment of counsel could not possibly be advanced by awarding the appellant fees for professional services in this case. The Civil Rights Attorney's Fees Act does not justify a payment when it is not needed as an incentive for legal services.

The question of whether a litigant appearing pro se is entitled to attorney fees under 42 U.S.C.A. § 1988, supra, was addressed by the Eighth Circuit in Davis v. Parratt, 608 F.2d 717 (8th Cir. 1979). The court noted that the legislative history of 42 U.S.C.A. § 1988, supra, reveals that its purpose is not to compensate pro se litigants, but to provide for counsel fees in order to give private citizens a meaningful opportunity to vindicate their rights:

> "In many cases arising under our civil rights laws, the citizen who must sue to enforce the law has little or no money with which to hire a lawyer. If private citizens are to be able to assert their civil rights, . . . [they] must have the opportunity to recover what it costs them to vindicate these rights in court.
>
> "S.Rep.No.49-1011, 94th Cong., 2d Sess. 2, reprinted in [1976] U.S.Code Cong. & Ad. News, pp. 5908, 5910. See Morrow v. Dillard, 580 F.2d 1284, 1299 (5th Cir. 1978); Sargeant v. Sharp, 579 F.2d 645, 648-49 (1st Cir. 1978); see also Pickette v. Milam, 579 F.2d 1118, 1121 (8th Cir. 1978); Planned Parenthood of Minnesota, Inc. v. Citizens for Community Action, 558 F.2d 861, 870-71 (8th Cir. 1977). This section presupposes a relationship of attorney and client that is lacking in the instant case. The district court properly denied Davis' application for attorney fees." Davis v. Parratt, supra, at 718.

In Lovell v. Snow, 637 F.2d 170, 171 (1st Cir. 1981), the court said:

> "We have recently held that attorney fees may not be awarded to pro se plaintiffs pursuant to the attorney fee provisions of the Freedom of Information Act (FOIA), 5 U.S.C. Section 552(a)(4)(E). Crooker v. United States Department of Justice, 632 F.2d 916, 920-22 (1st Cir. 1980). Our starting point there, as here, was the intent of Congress. We identified the dominant purpose of the FOIA's attorney fee provision as the removal of 'the obstacle of attorney fees [so that] all litigants have 'access to the courts to vindicate their statutory rights.' [Citation omitted.] Precisely the same policy lay behind the enactment of the Civil Right Attorney's Fee Awards Act, 42 U.S.C. § 1988. [Citations omitted.] In light of this identity of statutory policies, the reasoning which we set forth in Crooker, supra, 632 F.2d

at 920-22, fully applies in the case of a pro se plaintiff's request for attorney fees pursuant to 42 U.S.C. Section 1988. It need not be repeated here."

See also Owens-El v. Robinson, 498 F.Supp. 877 (W.D.Pa. 1980); and Rheuark v. Shaw, 477 F.Supp. 897 (N.D.Tex. 1979), cert. denied 101 S.Ct. 1392 (1981). Both deny attorney fees because the litigants appeared pro se.

The appellant in this case has not retained counsel. He has incurred no actual expense for professional services, and an award of "fees" for professional services to appellant would constitute a windfall. The district court did not award attorney fees, and appellant has shown no reasonable grounds to reverse the district court.

Affirmed.

APPENDIX

"INFORMATION PRACTICES STATEMENT
"DRIVER'S LICENSE RECORDS

"1. Authority for collection of the information is the Driver's License Act, Sections 31-276.1 through 31-276.37 W.S.1957 as amended.

"2. The principal purposes for which this information is intended is to determine if you are qualified for a driver's license and able to operate a motor vehicle competently.

"3. This information is used to determine your qualifications for a driver's license, compile statistical data and law enforcement purposes.

"4. If the information requested is not furnished, you may not be able to establish your qualifications for a driver's license.

"I understand that this one time information practice statement will apply to all requests for personal information made by the Motor Vehicle Division of the Wyoming Department of Revenue and Taxation and commissioned law enforcement personnel of the State of Wyoming and of the United States of America. I understand that this form which I have signed, will be placed in my vehicle records as evidence of this notification. This is my consent to obtain information from any source which may affect my qualifications for a driver's license. I understand I can receive additional copies upon request for my own purposes.

"DEPARTMENT OF REVENUE & TAXATION
"RULE AND REGULATION

_____
"Signature of applicant

"Date signed: _____"

IN THE SUPREME COURT OF THE UNITED STATES

RECEIVED
APR 2 1982
OFFICE OF THE CLERK
SUPREME COURT U.S.

Term, 1982

Case No. _____

DAVID J. SCHOLL, APPELLANT

v.

Filed in the
Wy Supreme Court
April 1, 1982

RUDOLPH ANSELMI, R.A. HAKALA, and DORAN LUMMIS,
as individuals and as
THE WYOMING TAX COMMISSION,
and DANIEL C. LEACH, JR.,
as an individual and as
DIRECTOR, MOTOR VEHICLE DIVISION,
DEPARTMENT OF REVENUE AND TAXATION,
STATE OF WYOMING

ON APPEAL FROM THE
SUPREME COURT OF THE STATE OF WYOMING

NOTICE OF APPEAL

David J. Scholl,
Appellant acting
Pro Se

P.O. Box 2832
Jackson, Wyoming
83001

NOTICE OF APPEAL

Notice is hereby given that David J. Scholl hereby appeals to the Supreme Court of The United States from the ruling of the Supreme Court of the State of Wyoming, No. 5564 dated February 11, 1982, which affirmed the decision of the First District Court of the State of Wyoming, No. 91-413, dated May 1, 1981.

This Appeal is taken pursuant to 28 USC § 1257(2)

David J. Scholl, Appellant
Pro Se

P.O. Box [illegible]
Jackson, Wyoming
83001

I certify that the above Notice of Appeal was sent to the Attorney for the Appellees in the above entitled cause by deposit in the United States Mail, postage pre-paid, on the 30th day of March, 1982, addressed to:

Ron Arnold
Attorney General's Office
State Capitol
Cheyenne, Wyoming
82001

dated: March 30 1982

David J. Scholl, Appellant
Pro Se

A copy of this Notice of Appeal has been sent to the Courts below addressed to:

Clerk of the Court
Wyoming Supreme Court
State Capitol
Cheyenne, Wyoming
82001

Clerk of the Court
First District Court of Wyoming
Laramie County Courthouse
Cheyenne, Wyoming
82001

Sent in the United States Mail, postage pre-paid.

Dated: March 30, 1982

David J. Scholl, Appellant
Pro Se

The State of Wyoming
First Judicial District

JOSEPH F. MAIER
JUDGE
P. O. BOX 249
CHEYENNE, WYOMING

JAMES E. GRIGSBY
COURT REPORTER

May 1, 1981

Mr. David Scholl
86 S. Main Street
Buffalo, Wyoming 82834

Mr. Ronald Arnold
Assistant Attorney General
State Capitol Building
Cheyenne, Wyoming 82002

Re: Laramie County Civil Docket 91-413; State et rel. Scholl v. Anselmi, et al.

Gentlemen:

This case is before the Court upon the briefs of the parties. The facts are not complicated. The respondent states the facts to be that the petitioner applied for a renewal of his driver's license which expired on September 23, 1978. Petitioner was denied a renewed license on the basis that he failed to properly complete the application form in that he did not include his social security number on said form. Petitioner did meet all other qualifications for the issuance of said license.

The issue which has been [illegible] and briefed by the parties relates to the authority of the respondent to require petitioner to provide the department with his social security number as a part of an application for a driver's license, and upon refusal to provide the social security number, to deny the issuance of the driver's license although conceding that petitioner is in all other respects qualified to receive the driver's license.

The respondent takes the position that, after admitting that they have not promulgated rules and regulations in regard to the contents required on the application or other forms, that they need not promulgate rules and regulations in this regard. Respondent points first to W.S. 31-7-103 which provides:

> "The administration of this act is vested in and shall be exercised by the motor vehicle division under the state tax commission of Wyoming which may prescribe forms and reasonable rules and regulations in conformity with this act for the administration thereof."

The respondent then says that under this statute, that it is discretionary with the motor vehicle division as to whether they need to promulgate rules and regulations and that "if there is no need for rules and regulations in order to administer a section of an act, then the agency would merely administer in accordance with the statutory section. The respondent then specifically bases its reliance in this case upon the statutory section following, that is, W. S. §31-7-111:

> "Every application for instruction permit or driver's license shall be made upon a form furnished by the division."

The respondent specifically states in their brief (page 3) that this is "the statutory section upon which the Motor Vehicle Division relies on (sic) in requiring the disclosure of a social security number and waiver of confidentiality. . ." In arguing this position the respondent says that there is nothing in that section of the statute last quoted that limits the information the motor vehicle division may request. Respondent then asserts, "The legislative intent is clear that the appliction form will be furnished by the division which permits the division to draft the form as to what information the division deems to be needed. Therefore, the request on the form for disclosure of a social security number is statutorily authorized. . . ."

It would appear that the disposition of this assertion will dispose of the present case. The petitioner has raised other

issues, specifically contending that the requirement for the furnishing of the social security number would violate his right of privacy and further the petitioner also contends that a requirement that he furnish his social security number infringes his first amendment right of freedom of religion. This Court holds that the department has neither statutory nor rule authority to require the social security number on the application form and for that reason we do not reach the additional issues. It should be pointed out that in reaching this conclusion, the Court does not intend to pass on the question as to whether or not the respondent might receive specific statutory authorization by subsequent act of the legislature which would authorize them to require such information on the application; or even that the respondent might in the future by adopting appropriate rules and regulations require such information be furnished as a condition to the issuance of a license. All that we are holding in this case is that in the absence of either expressed statutory authorization or any properly adopted rule and regulation, the division is without authority to require the social security number be furnished as a condition precedent to the issuance of a driver's license when all other qualifications have been met and the applicant is admittedly entitled to the license except for the failure to furnish his social security number.

I have reached this conclusion after an examination of the Driver's License Act of the Wyoming Statutes, §31-7-101 through §31-7-138. Section 31-7-102 was quoted above.

It may be of interest to also note that §31-7-111(b) provides:

> "Every application shall state the full name, date and place of birth, sex and residence address of the applicant, and briefly describe the applicant, and shall state whether the applicant has previously been licensed as a driver and, if so, when and by what state or county, and whether any such license has ever been suspended or revoked, or whether an application has ever been refused,

and if so, the date of and reason for such suspension, revocation or refusal."

It is interesting to note that this statute goes into some detail as to what shall be in the application, and it does not contain any authorization to require the applicant, on the application, to state or disclose his social security number.

Section 31-7-106(e) is also of some interest in discussing this problem:

"The division shall issue a driver's license to each qualified applicant not later than thirty (30) days from the date of application therefor."

From the present statutory language, we think the respondent attempts to read the language much more broadly than this Court believes appropriate. I can find no language in the statute either expressly or by necessary implication granting to the division the right to require on the application form a disclosure of an applicant's social security number. The respondent admits that it has adopted no rule or regulation providing for the furnishing of the social security number as a necessary part of an application for driver's license. In fact, in its brief, the respondent expressly relies on the statutory authority as cited above. We simply do not believe that the statute grants the authority contended for by the respondent. Accordingly, the writ should issue.

Very truly yours,

Joseph F. Maier
District Judge

JFM/bb

STATE OF WYOMING)
) SS:
COUNTY OF LARAMIE)

IN THE DISTRICT COURT

FIRST JUDICIAL DISTRICT

CIVIL DOCKET NO. 91-~~142~~ 413

THE STATE OF WYOMING,
upon the relation of
DAVID J. SCHOLL,

Relator,

v.

RUDOLPH ANSELMI, R.A. HAKALA, and DORAN LUMMIS, as individuals and as

THE WYOMING TAX COMMISSION

and

DANIEL C. LEACH, JR., as an individual and as

DIRECTOR, MOTOR VEHICLE DIVISION DEPARTMENT OF REVENUE AND TAXATION, STATE OF WYOMING,

Respondents.

FILED
JUN 24 1980
Gerrie E. Bishop
Clerk of the District Court

JUDGMENT AND ORDER OF ALLOWANCE OF PEREMPTORY WRIT OF MANDAMUS

Relator's Petition for Writ of Mandamus was filed in the above entitled matter on the 3rd day of June, 1980, and the matter having been set for hearing before the Court on the 18th day of June, 1980, at 3:00 P.M., and said hearing having thereafter been continued by Order of the Court and based upon a stipulation and agreement of the parties by which the parties stipulated and agreed to the facts and to a submission of the matter upon briefs, and the Court having thereupon fully reviewed the pleadings, the stipulation of facts and the briefs and arguments of counsel and being now fully advised, the Court finds as follows:

1. That relator, David J. Scholl, did apply for renewal of his Wyoming driver's license on or about December 13, 1978;

2. That relator did successfully complete his required examination and all acts necessary for the issuance of a driver's license;

3. That respondents refused to renew relator's driver's license on the basis that relator refused to disclose his social security number and refused to allow the same to be placed on his driver's license;

4. That the relator further refused to give his consent to the respondents so that the division might obtain records dealing with his qualifications to safely operate a motor vehicle;

5. That the respondents relied on the provisions of §31-7-111, W.S., 1977 Republished Edition as the basis for their requirement that relator furnish a social security number to be placed on his driver's license;

6. That §31-7-106(e), W.S., 1977 Republished Edition, expressly mandates that the division shall issue a driver's license to each qualified applicant not later than thirty (30) days from the date of application therefor;

7. That there is no statute, either expressly or by necessary implication, granting to the Motor Vehicle Division the right to require on the application form a disclosure of an applicant's social security number;

8. That the respondents did not promulgate any rules under the rulemaking authority of administrative agencies as provided in Wyoming statutes, with regard to the matter before the Court;

9. That this matter was submitted to the Court on a stipulated set of facts and there were no other hearings or facts before

the Court upon which findings can be made except by the stipulation in the file;

10. That this Court entered an Order on July 11, 1980, which permitted relator to operate a motor vehicle pending the final determination of this matter on the merits;

11. That §31-7-119(b), W.S., 1977 Republished Edition, allows the Division to require the applicant to consent to the Division obtaining records dealing with the applicant's qualifications to safely operate a motor vehicle;

12. That the relator is a party beneficially interested in this matter; that relator has no adequate remedy at law, and that he is entitled to the entry of a peremptory writ of mandamus.

IT IS THEREFORE ORDERED that judgment be, and the same is hereby, entered in favor of the relator and against the respondents and that a Writ of Peremptory Mandamus is granted; and

IT IS FURTHER ORDERED that the Clerk of this Court shall issue a peremptory writ of mandamus directed to the respondents ordering and directing them to issue a driver's license to relator without placement of relator's social security number on the license.

IT IS FURTHER ORDERED that relator's claim for damage be, and the same is hereby denied and that relator shall recover his costs herein incurred.

Done in open court this 24th day of June, 1981.

STATE OF WYOMING, COUNTY OF LARAMIE, SS: CERTIFICATE

I, Gerrie E. Bishop, Clerk of the District Court in and for the Second Judicial District, Laramie County, Wyoming, do hereby certify that the within and foregoing is a full, true and correct copy of the original thereof as the same remains on file or of record in my office and that the same is in full force and effect as of this date, and I have hereunto set my hand and seal of said court this 24 day of June, 1981.

GERRIE E. BISHOP
Clerk of District Court
By Deputy

JUDGE

121

The State of Wyoming
First Judicial District

JOSEPH F. MAIER
JUDGE
P. O. BOX 240
CHEYENNE, WYOMING

JAMES E. GRIGSBY
COURT REPORTER

July 8, 1981

Mr. David J. Scholl
P. O. Box 2832
Jackson, Wyoming 83001

Dear Mr. Scholl:

I have the proposed form of Writ of Mandamus which you submitted. It is not approved in its present form since it reflects the requirement for payment of "costs" in the amount of $3,150.00, and indicates that such costs are composed of attorney's fees and legal research, among other things, which are not allowable as court costs. A certificate of court costs may be submitted and the Court will approve those permissible if desired.

Very truly yours,

Joseph F. Maier
District Judge

JFM/bb
xc: Mr. Ron Arnold
Assistant Attorney General
123 Capitol Building
Cheyenne, Wyoming 82002

APPENDIX V.

WYOMING DRIVER'S LICENSE ACT

(RELEVANT PROTIONS)

CHAPTER 7

Driver's License Act

Sec.
31-7-101. Short title.
31-7-102. Definitions.
31-7-103. Administration and enforcement.
31-7-104. Disposition of fees.
31-7-105. Independent hearing examiner.
31-7-106. License required; limited to 1 license; exceptions.
31-7-107. Persons exempted.
31-7-108. Persons not to be licensed.
31-7-109. Classes of licenses.
31-7-110. Instruction permits and temporary licenses.
31-7-111. Application for license or instruction permit.
31-7-112. Application of persons under age 18.
31-7-113. Fees.
31-7-114. Examination required.
31-7-115. Description and content of licenses.
31-7-116. License to be carried and exhibited on demand.
31-7-117. Restricted licenses.
31-7-118. Duplicate permit or license.
31-7-119. Expiration and renewal of license; reexamination required.
31-7-120. Records to be kept by the division.
31-7-121. Medical advisory board.
31-7-122. Authority of division to cancel license.
31-7-123. Suspending privileges of nonresidents; reporting convictions, suspensions and revocations.
31-7-124. Suspension upon notice of conviction in another state.
31-7-125. When court to forward license to division and report convictions.
31-7-126. When revocation mandatory; period of revocation.
31-7-127. Authority of division to suspend or revoke license.
31-7-128. Division may require reexamination.
31-7-129. Investigation by division.
31-7-130. Period of suspension or revocation.
31-7-131. Surrender and return of license.
31-7-132. No operation under foreign license during suspension or revocation in this state.
31-7-133. Right of appeal to court.
31-7-134. Unlawful use of license.
31-7-135. Driving while license suspended or revoked.
31-7-136. Permitting unauthorized minor to drive.
31-7-137. Permitting unlicensed person to drive.
31-7-138. General penalties.

Severability. — Section 2, ch. 238, Laws 1973, provides: "If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application. To this end the provisions of this act are declared to be severable."

Effective date. — Section 4, ch. 238, Laws 1973, makes the act effective July 1, 1973.

Law review. — See "Administration of the Wyoming Financial Responsibility Act," 5 Wyo. L.J. 84.

See "The License Problem," 11 Wyo L.J. 106, 107.

Am. Jur. 2d, ALR and C.J.S. references. — 7 Am. Jur. 2d Automobiles and Highway Traffic §§ 93 to 123.

Defense of contributory negligence as affected by failure to comply with regulations as to registration or license, 16 ALR 1106; 35 ALR 62; 38 ALR 1038; 43 ALR 1153; 54 ALR 374; 58 ALR 532; 61 ALR 1190; 78 ALR 1029; 87 ALR 1469; 111 ALR 1258; 163 ALR 1375.

Liability for injury or damage by unlicensed car or car driven by unlicensed person, 16 ALR 1117; 35 ALR 68; 54 ALR 381; 58 ALR 533; 61 ALR 1191; 78 ALR 1031; 87 ALR 1473; 111 ALR 1266; 163 ALR 1375.

Loan of car to unlicensed driver as affecting liability of owner for negligence, 36 ALR 1152; 68 ALR 1015; 100 ALR 926; 127 ALR 475.

Validity, construction and applicability of statute or ordinance relating to grant of license or permit to operate automobile, 71 ALR 616; 108 ALR 1162; 125 ALR 1459.

Lack of proper automobile registration or operator's license as evidence of negligence, 29 ALR2d 963.

What constitutes conviction or adjudication of guilt for purposes of refusal, revocation or suspension of automobile driver's license, 79 ALR2d 884.

Denial, suspension or cancellation of driver's license because of physical disease or defect, 38 ALR3d 492.

60 C.J.S. Motor Vehicles §§ 146 to 164.
State's liability for improperly licensing negligent driver, 79 ALR3d 955.

§ 31-7-101. Short title.

This act shall be known and may be cited as the Driver's License Act. (Laws 1973, ch. 238, § 1.)

§ 31-7-102. Definitions.

(a) As used in this act, unless the context otherwise requires or unless otherwise specifically noted:

(i) "License," "driver's license," or "instruction permit" means any license or permit secured by a person from the division, in accordance with this act which grants the privilege to drive or operate a motor vehicle on the public highways, streets and roads of this state;

(ii) "License fee" means the fee imposed by this act;

(iii) "Division" or "motor vehicle division" means that division under the state tax commission and within the department of revenue, and which is designated, duly authorized, and charged to administer the provisions of this act;

(iv) "Motor vehicle" means every vehicle which is self-propelled and designed for normal use on the highways;

(v) "Motorcycle" means every motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three (3) wheels in contact with the ground, but excluding a tractor and golf cart;

(vi) "Person" means every individual, firm, corporation, partnership, or association, and shall also include any operator of a motor vehicle along or on any public highway, road or street in the state;

(vii) "Suspension" means the temporary withdrawal by formal action of the division of a person's license or privilege to operate a motor vehicle on the public highways, which temporary withdrawal shall be for a period specifically designated by the division;

(viii) "Revocation" means the termination by formal action of the division of a person's license or privilege to operate a motor vehicle on the public highways, which termination shall not be subject to renewal or restoration except that an application for a new license may be presented and acted upon by the division after the expiration of the applicable period of time prescribed in this act;

(ix) "Cancellation" means the annulment or termination by formal action of the division of a person's license because of some error or defect in the license or because the licensee is no longer entitled to such license, but the cancellation of a license is without prejudice and application for a new license may be made at any time after such cancellation;

(x) "Commission" or "tax commission" means the state tax commission of Wyoming or any duly authorized employee of the same charged with the administration of this act;

(xi) "Nonresident" means a person who is not a resident of this state;

(xii) "Nonresident operating privilege" is the privilege conferred upon a nonresident by the laws of this state pertaining to the operation by such person of a motor vehicle or the use of a vehicle owned by such person in this state;

(xiii) "Owner" means a person, other than a lienholder, having the property in or title to a vehicle. The term includes a person entitled to the use and possession of a vehicle subject to a security interest in another person, but excludes a lessee under a lease not intended as security;

(xiv) "Registration" means the registration certificate or certificates and registration plates issued under the laws of this state pertaining to the registration of motor vehicles;

(xv) "School bus" means a motor vehicle that complies with the requirements for such vehicle of the laws of Wyoming and is used to transport children to or from school or in connection with school activities, but not including buses operated by a common carrier in urban transportation of school children;

(xvi) "Conviction" means a final conviction and shall include an unvacated forfeiture of bail or collateral deposited to secure a defendant's appearance in court, a plea of nolo contendere accepted by the court, the payment of a fine, a plea of guilty, or a finding of guilt for a traffic violation charge;

(xvii) "Driver" means every person who drives a vehicle;

(xviii) "This act" means W.S. 31-276.1 through 31-276.37 [§§ 31-7-101 to 31-7-138]. (Laws 1973, ch. 238, § 1; 1977, ch. 28, § 1.)

The 1977 amendment added subdivision (xviii).

Transfer of powers and duties of state tax commission and department of revenue. — The powers, duties, functions and regulatory authority of the state tax commission and department of revenue were transferred to the department of revenue and taxation by § 1, ch. 248, Laws 1973. For present provisions as to powers and duties of tax commission, see § 39-1-303.

Effective date. — Section 2, ch. 28, Laws 1977, makes the act effective May 27, 1977.

§ 31-7-103. Administration and enforcement.

The administration of this act is vested in and shall be exercised by the motor vehicle division under the state tax commission of Wyoming which may prescribe forms and reasonable rules and regulations in conformity with this act for the administration thereof. The tax commission shall keep full and accurate records of all monies received by it, and how disbursed, and such records shall be open to examination at any and all times by the state examiner or his deputy or examiners and the audit division of the legislative service office. The highway patrol of Wyoming, and all police officers of any county or municipality, shall aid in the enforcement of this act (Laws 1973, ch. 238, § 1.)

Transfer of powers and duties of state tax commission and department of finance. — See note to § 31-7-102.

§ 31-7-104. Disposition of fees.

The license fees levied and collected under the provisions of this act shall be payable to the department of revenue and taxation and transmitted to the state treasurer to be credited to the highway fund. (Laws 1973, ch. 238, § 1; 1974, ch. 16, § 2.)

Effective date. — Section 8, ch. 16, Laws 1974, makes the amendment to this section effective July 1, 1975.

§ 31-7-105. Independent hearing examiner.

(a) There is created the office of hearing examiner. The hearing examiner shall be a qualified member of the bar of Wyoming. He shall be appointed by the governor and serve as designated by the governor, either part-time or full-time and shall serve at the pleasure of the governor. In addition to his duties as hearing examiner, he may be employed as an attorney or other department official of Wyoming. In such case, he shall not receive additional compensation for his functions as hearing examiner.

(b) The hearing examiner shall sit as the exclusive administrative hearing agency within the department to review all matters arising from driver's license and related matters including but not limited to the suspension of driver's license, financial responsibility, registration and other related matters. The hearing examiner shall not review cases under W.S. 31-276.25 (i), (ii), (v) or (vi) [§ 31-7-126 (a) (i), (ii), (v) or (vi)] in which revocation of a license is mandatory.

(c) Any order of the hearing examiner is subject to a hearing before the Wyoming tax commission in accordance with the Wyoming Administrative Procedure Act [§§ 9-4-101 to 9-4-115].

(d) In connection with any hearing held pursuant to this section, the hearing examiner may subpoena and compel the attendance of witnesses or the production of evidence reasonably necessary to resolve the matters under consideration. The hearing examiner shall issue subpoenas upon his own motion or upon the request of any party to the proceedings in compliance with the Wyoming Rules of Civil Procedure. (Laws 1973, ch. 248, § 1; 1977, ch. 45, § 3; ch. 111, § 1.)

1977 amendments. — Section 3, ch. 45, Laws 1977, redesignates former § 39-43.11, W.S. 1957, as this section.

Section 1, ch. 111, Laws 1977, also redesignates former § 39-43.11, W.S. 1957, as this section and, in subsection (a), deleted "hereby" preceding "created" in the first sentence and "as" preceding "either," "a" following "either" and "hearing examiner" following "full-time" in the third sentence. The amendment also, in the first sentence of subsection (b), substituted "The hearing examiner shall sit" for "The duties of the hearing examiner will be to sit," deleted "matters" both preceding and following "registration" and deleted "pertaining to driver's license point system including the revocation, cancellation or suspension of driving privileges under such point system" following "matters" at the end of the sentence, and added the second sentence in that subsection, and, in subsection (c), deleted "the right for" following "subject to" and substituted "is" for "shall be," "Wyoming tax commission" for "board," "accordance" for "accord" and "the Wyoming Administrative Procedure Act" for "section 39-43.10 (a) (i) and (ii) of the statutes or subject to judicial review pursuant to the provisions of section 39-43.12 of the statutes at the option of the petitioner." Finally, the amendment

substituted "or" for "in" in the first sentence and deleted "under this title" following "proceedings" in the second sentence of subsection (d).

Conflicting legislation. — Section 8, ch. 45, Laws 1977, reads: "If any other act of the legislature enacted during the same session in which this act is enacted is in conflict with the provisions of this act, the other act shall prevail in all cases to the extent of such conflict, regardless of whether enacted before or after the enactment of this act."

Effective dates. — Section 9, ch. 45, Laws 1977, makes the act effective January 1, 1978.

Section 3, ch. 111, Laws 1977, makes the act effective May 27, 1977.

§ 31-7-106. License required; limited to 1 license; exceptions.

(a) No person, unless otherwise exempt under this act, shall drive any motor vehicle upon a highway in this state unless the person has a valid driver's license under the provisions of this act for the type or class of vehicle being driven.

(b) No person, unless otherwise exempt under this act, shall steer or, while at the passenger compartment of a vehicle, exercise any degree of physical control of the vehicle being towed by a motor vehicle upon a highway in this state unless the person has a valid driver's license under the provisions of this act for the type or class of vehicle being towed.

(c) No person is permitted to have more than one (1) valid driver's license at any time, nor shall any person receive a driver's license under this act until he surrenders to the division all valid drivers' licenses in his possession, except that the division may permit a person to have more than one (1) valid license if:

(i) The person is required to have a valid license in another state because of employment in that state, and the person furnishes the division with an affidavit from his employer or the driver's license issuing authority for the state, attesting to the person's need to be licensed therein. The division may also require a person to submit additional information it deems necessary to determine whether or not the person is entitled to hold more than one (1) valid license under this paragraph;

(ii) The person is required under the provisions of this act to have a valid Wyoming driver's license, and because of residency in another state is required also to be licensed therein. Any person seeking to hold more than one (1) valid driver's license under this paragraph shall furnish the division with any pertinent information it deems necessary to determine whether or not the person is entitled to hold more than one (1) valid license; or

(iii) The person is required to hold a federal license.

(d) The division shall return any surrendered license to the issuing jurisdiction, together with information that the licensee is now licensed in Wyoming.

(e) The division shall issue a driver's license to each qualified applicant not later than thirty (30) days from the date of application therefor.

(f) Any person licensed as a driver under this act may exercise the privilege thereby granted upon all streets and highways in this state and is not required to obtain any other license to exercise the privilege from any county, municipality or local board, or any other body having authority to adopt local police regulations. (Laws 1973, ch. 238, § 1; 1977, ch. 28, § 1.)

THE DEPARTMENT OF REVENUE AND TAXATION

The 1977 amendment substituted "unless otherwise exempt under this act" for "except those hereinafter expressly exempted" near the beginning of subsections (a) and (b), redesignated former subsection (c) as present subsection (f), inserted present subsections (c) through (e) and, in present subsection (f), substituted "under this act" for "hereunder" and "from any county" for "by any county" and inserted "any other" preceding "body."

Effective date. — Section 2, ch. 28, Laws 1977, makes the act effective May 27, 1977.

§ 31-7-107. Persons exempted.

(a) The following persons are exempt from the licensing requirement under this act:

(i) Any employee of the United States government while operating a motor vehicle owned by or leased to the United States government and being operated on official business, unless such employee is required by the United States government or any agency thereof to have a state driver's license;

(ii) A nonresident who is at least sixteen (16) years of age and who has in his immediate possession a valid license issued to him in his place of residence, but this exemption expires thirty (30) days after any nonresident enters the state of Wyoming and acquires employment or intends to become a resident of the state of Wyoming;

(iii) A nonresident on active duty in the armed forces of the United States who has a valid license issued by his state of residence and the nonresident's spouse or dependent son or daughter who has a valid license issued by the person's state of residence;

(iv) Any person on active duty in the armed forces of the United States who has in his immediate possession a valid license issued in a foreign country by the armed forces of the United States may operate a motor vehicle in this state for a period of not more than 45 days from the date of his return to the United States. (Laws 1973, ch. 238, § 1; 1976, ch. 16, § 1.)

Effective date. — Section 2, ch. 16, Laws 1976, makes the act effective May 28, 1976.

§ 31-7-108. Persons not to be licensed.

(a) No driver's license shall be legally issued to any person who is under the age of sixteen (16) years, except as provided in section 31-276.9 [§ 31-7-110] of the statutes.

(b) The division shall not issue any driver's license to, nor renew the driver's license of, any person:

(i) Whose license is currently under suspension or revocation in this state or any other state, except as otherwise provided in this act;

(ii) Who is an habitual drunkard or is an habitual user of any controlled substance to a degree rendering him incapable of safely driving a motor vehicle;

(iii) Who has previously been adjudged by a court of law to be mentally incompetent, and who has not at the time of application been restored to competency by the methods provided by law;

(iv) Who is required by this act to take an examination, unless the person has successfully passed the examination;

(v) When the director of the division has good cause from the examination administered to such person by provisions of section 31-276.13 [§ 31-7-114] of the statutes, to believe that the person by reason of physical or mental disability would not be able to operate a motor vehicle upon the highways with safety. (Laws 1973, ch. 238, § 1.)

Cross references. — As to permitting person under 15 to drive, see § 31-5-120.

§ 31-7-109. Classes of licenses.

(a) Every driver's license issued by the department shall be classified to indicate the type or general class of vehicles the licensee may drive.

(b) License classification shall be prescribed by the department and shall take into account the operational characteristics of the vehicles involved, their design and factors the division reasonably believes are important to safe traffic. These qualifications may include any test or affidavit of proficiency authorized to be given to the original applicants by section 31-276.13 [§ 31-7-114] of the statutes.

(c) Licensing classification plan:

(i) Class "C" consists of any single vehicle or combination of vehicles except motorcycles and buses not in excess of sixteen thousand (16,000) pounds unladen vehicle or total combined weight;

(ii) Class "B" consists of any single vehicle, except motorcycles, weighing over sixteen thousand (16,000) pounds unladen vehicle weight and all vehicles under class "C";

(iii) Class "A" consists of any vehicle or combination of vehicles, except motorcycles, including all vehicles under classes "B" and "C";

(iv) Class "M" consists of motorcycles.

(d) No person shall drive any school bus transporting school children or any motor vehicle when in use for transporting persons for compensation unless he is licensed to drive that class of vehicle and has attained the age of eighteen (18) years. However, a driver, licensed under the provisions of this act, who has attained the age of sixteen (16) years, and not as yet the age of eighteen (18) years, and who has secured the approval of the school district and the permission of a parent or guardian of each child so transported, shall be given a special endorsement on his driver's license for the operation of a motor vehicle in which students may be transported to and from school. (Laws 1973, ch. 238, § 1.)

(e) all app

§ 31-7-110. Instruction permits and temporary licenses.

(a) Any person who is at least fifteen (15) years of age may apply to the division for an instruction permit. The division may in its discretion, after the applicant has successfully passed all parts of the examination other than the driving test, issue to the applicant an instruction permit which shall entitle the applicant while having the permit in his immediate possession to drive a specified type or class of motor vehicle upon the public highways for a period of one (1) year when accompanied by a person at least eighteen (18) years of age who has

been licensed as a driver for the type or class of vehicle being used for at least one (1) year, who is fit and capable of exercising control over the vehicle and who is occupying a seat beside the driver. This subsection does not apply to instruction permits for the operation of motorcycles.

(b) Any person who is at least fifteen (15) years of age may apply to the division for a motorcycle instruction permit. The division may in its discretion, after the applicant has successfully passed all parts of the examination including a driving test, issue to the applicant an instruction permit which shall entitle the applicant while having the permit in his immediate possession to drive a motorcycle upon the public highways for a period of one (1) year, without passenger.

(c) The division may in its discretion issue a temporary driver's permit to an applicant for a driver's license, permitting him to operate a specified type or class of motor vehicle while the division is completing its investigation and determination of all facts relative to such applicant's eligibility to receive a driver's license. The permit or receipt for application thereof, must be in his immediate possession while operating a motor vehicle of the type for which the license is issued, and it shall be invalid upon expiration thereof or when the applicant's license has been issued or for good cause has been refused. When any temporary permit shall become invalid, the division shall give notice to the permit holder who shall thereupon immediately return the temporary permit to the division. (Laws 1973, ch. 238, § 1.)

§ 31-7-111. Application for license or instruction permit.

(a) Every application for instruction permit or driver's license shall be made upon a form furnished by the division. Every application shall be accompanied by the proper fee and payment of the fee entitles the applicant to not more than three (3) attempts to pass the examination within a period of six (6) months from the date of application.

(b) Every application shall state the full name, date and place of birth, sex and residence address of the applicant, and briefly describe the applicant, and shall state whether the applicant has previously been licensed as a driver and, if so, when and by what state or country, and whether any such license has ever been suspended or revoked, or whether an application has ever been refused, and if so, the date of and reason for such suspension, revocation or refusal.

(c) Whenever application is received from a person previously licensed in another jurisdiction, the division may request a copy of the driver's record from the other jurisdiction. When received, the driving record shall become a part of the driver's record in this state.

(d) Whenever the division receives request for a driving record from another licensing jurisdiction, the record shall be forwarded without charge. (Laws 1973, ch. 238, § 1.)

§ 31-7-112. Application of persons under age 18.

(a) The application of any person under the age of eighteen (18) years for an instruction permit or driver's license shall be signed and verified before a person

authorized to administer oaths by the father or mother or guardian, or in the event there is no parent or guardian, then by another responsible adult. (Laws 1973, ch. 238, § 1.)

§ 31-7-113. Fees.

(a) Every applicant for a driver's license shall pay a fee of two dollars and fifty cents ($2.50).

(b) Where the driver's license is issued for more than one (1) class or type of vehicle at the time of issuance there shall be no additional fee for the endorsement to the driver's license.

(c) Every applicant for an instruction permit shall pay a fee of one dollar ($1.00). (Laws 1973, ch. 238, § 1.)

§ 31-7-114. Examination required.

(a) The division shall examine every applicant for a driver's license and instructional permit. The examination shall include a test of the applicant's eyesight, his ability to read and understand official traffic control devices, his knowledge of safe driving practices, the traffic laws of the state, and may include an actual demonstration of ability to exercise ordinary and reasonable control in the operation of a motor vehicle of the type or general class of vehicles to be operated pursuant to the license applied for except where an affidavit is accepted by the division.

(b) The division may in its discretion waive the driving test of any person applying for a renewal license under the provisions of this act.

(c) The division shall make provision for giving an examination either in the county where the applicant resides or at a place adjacent thereto reasonably convenient to the applicant within not more than thirty (30) days from the date the application is received. (Laws 1973, ch. 238, § 1.)

§ 31-7-115. Description and content of licenses.

(a) The division shall upon payment of the required fee issue to every applicant qualifying therefor a driver's license, indicating the type or general class of vehicle the licensee may drive, which license shall bear thereon a distinguishing number assigned to the licensee, the full name, date of birth, residence address, brief description, a color photograph of the licensee, a space wherein an anatomical organ donor can be identified and either a facsimile of the signature of the licensee or a space upon which the licensee shall write his usual signature. No license shall be valid until it has been signed by the licensee.

(b) The color photographs of licensees appearing on all driver's licenses shall be a profile view of the licensee for licensees under nineteen (19) years of age and a frontal view of the licensee for those nineteen (19) years of age or older. However, no person is required to renew his license until the regular expiration thereof but may exercise the renewal option provided in W.S. 31-7-119 (f). (Laws 1973, ch. 238, § 1; 1977, ch. 114, § 2; 1978, ch. 41, § 1.)

The 1977 amendment designated the formerly undesignated provisions of this section as present subsection (a), inserted "a space wherein an anatomical organ donor can be identified" in the first sentence of that subsection and added subsection (b).

The 1978 amendment added the second sentence of subsection (b).

Effective date. — Section 2, ch. 114, Laws 1977, makes the act effective May 27, 1977.

Section 2, ch. 41, Laws 1978, provides that the act is effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved March 10, 1978.

§ 31-7-116. License to be carried and exhibited on demand.

Every licensee shall have his driver's license in his immediate possession at all times when operating a motor vehicle and shall display the license upon demand of any judicial officer, municipal court judge, or any officer or agent of the division or any police officer of the state, county or municipality. However, no person charged with violating this section shall be convicted if he produces in court a driver's license previously issued to him and valid at the time of his arrest. For the purposes of this section "display" means the manual surrender of his license certificate into the hands of the demanding officer for his inspection thereof, after such examination the officer shall immediately return the license certificate to the licensee. (Laws 1973, ch. 238, § 1.)

Cross references. — As to duty to exhibit license at scene of accident, see § 31-5-1102.

ALR3d references. — Validity and construction of statute making it a criminal offense for the operator of a motor vehicle not to carry or display his operator's license or the vehicle registration certificate, 6 ALR3d 506.

§ 31-7-117. Restricted licenses.

(a) The division upon issuing a driver's license shall have authority whenever good cause appears to impose restrictions suitable to the licensee's driving ability with respect to special mechanical control devices required on a motor vehicle which the licensee may operate or such other restrictions applicable to the licensee as the division may determine to be appropriate to assure the safe operation of a motor vehicle by the licensee.

(b) The division may either issue a special restricted license or may set forth such restrictions on the usual license form.

(c) The division may issue a restricted class C or M license upon application, payment of the proper fees, submission of parent's or guardian's affidavit of extreme inconvenience, and the applicant having successfully passed the examination required by section 31-276.13 [§ 31-7-114] of the statutes, to a person not less than fourteen (14) years of age nor more than sixteen (16) years of age. The licensee may operate a vehicle between the hours of five (5:00) a.m. and seven (7:00) p.m., within a fifty (50) mile [illegible] of his domicile and at the direction of his parent or guardian. Any license issued under the provisions of this paragraph shall be revoked upon the second conviction of a moving violation.

(d) The division may upon receiving satisfactory evidence of any violation of the restrictions of the license, suspend or revoke the same but the licensee shall be entitled to a hearing as upon a suspension or revocation under this act.

direction of his parent or guardian. Any license issued under the provisions of this paragraph shall be revoked upon the second conviction of a moving violation.

(d) The division may upon receiving satisfactory evidence of any violation of the restrictions of the license, suspend or revoke the same but the licensee shall be entitled to a hearing as upon a suspension or revocation under this act.

(e) It is a misdemeanor for any person to operate a motor vehicle in any manner in violation of the restrictions imposed in a restricted license issued to him. (Laws 1973, ch. 238, § 1.)

§ 31-7-118. Duplicate permit or license.

In the event an instruction permit or a driver's license issued under W.S. 31-276.1 through 31-276.37 [§§ 31-7-101 to 31-7-138] is lost or destroyed or if it is desired to withdraw notice of anatomical organ donation, the person to whom the permit or license was issued may upon payment of two dollars ($2.00) for an instruction permit, and two dollars and fifty cents ($2.50) for any other license, obtain a duplicate, substitute, or replacement license without anatomical organ donor markings. Upon receipt of the replacement license, the original license shall be surrendered. (Laws 1973, ch. 238, § 1; 1977, ch. 114, § 2.)

The 1977 amendment rewrote this section.

Effective date. — Section 3, ch. 114, Laws 1977, makes the act effective May 27, 1977.

§ 31-7-119. Expiration and renewal of license; reexamination required.

(a) Every driver's license shall expire on the licensee's nineteenth birthday and thereafter on the licensee's birthday in the third year following the issuance of the license. Every driver's license shall be renewable within one hundred twenty (120) days before its expiration upon application, payment of the required fee and satisfactory completion of the examination required or authorized by subsection (b) of this section. However, no person eighteen (18) years of age renewing a license shall be issued a new license until the date of his nineteenth birthday.

(b) The division shall require every person applying for renewal of a driver's license to take and successfully pass a test of his eyesight, and knowledge of the traffic laws of this state. The division may require any applicant to take and successfully pass any or all additional tests or provide affidavits required or authorized under the original application as the department may find reasonably necessary to determine his qualification according to the type or general class of license.

(c) The division may defer the expiration of the license of a licensee who is on active duty in the armed forces of the United States for a period not in excess of three (3) years, upon such terms and conditions as it may prescribe. The division may similarly defer the expiration of the license of the spouse or

dependent son or daughter of the serviceman, if such person is residing with the serviceman.

(d) Any person whose license or privilege to drive a motor vehicle on the public highways has been revoked shall not be entitled to make application for a new license until the expiration of one (1) year from the date on which the revoked license was surrendered to and received by the division.

(e) Any such person making false application for a new license before the expiration of the period of revocation shall be guilty of a misdemeanor and upon conviction shall be punished by imprisonment for not more than six (6) months and there shall be imposed in addition thereto a fine of not more than one hundred dollars ($100.00). (Laws 1973, ch. 238, § 1; 1977, ch. 114, § 2.)

The 1977 amendment, in subsection (a), inserted "nineteenth" and "and thereafter on the licensee's birthday" in the first sentence, substituted "one hundred twenty (120)" for "120" in the second sentence and added the last sentence.

Effective date. — Section 3, ch. 114, Laws 1977, makes the act effective May 27, 1977.

§ 31-7-120. Records to be kept by the division.

(a) The division shall file every application for a license received by it and shall maintain suitable indexes containing, in a manner readily available to the division:

(i) All applications denied and on each thereof note the reasons for the denial;

(ii) All applications granted; and

(iii) The name of every licensee whose license has been suspended or revoked by the division and after each name, note the reasons for the action.

(b) The division shall also file all accident reports and abstracts of court records of convictions received by it under the laws of this state and in connection therewith maintain convenient records or make suitable notations in order that an individual record of each licensee showing the convictions of the licensee and the traffic accidents in which he has been involved shall be readily ascertainable and available for the consideration of the division upon any application for renewal of license and at other suitable times. (Laws 1973, ch. 238, § 1.)

Cross references. — As to records and reports in traffic cases, see §§ 31-5-1214, 31-7-125.

§ 31-7-121. Medical advisory board.

(a) There shall be a medical advisory board consisting of three (3) to five (5) members appointed by the commission with the assistance of the division of health and medical services in the department of health and social services. At least two (2) members of the advisory board shall be licensed to practice medicine in Wyoming and shall have training in areas known to relate to the physical and mental aspects of driving ability. However, at least one (1) member of the board shall be a person licensed to practice optometry in Wyoming. Members of the

advisory board shall serve at the pleasure of the commission and shall serve without compensation but may receive per diem and mileage in the same manner as employees of the state while engaged in the actual performance of their duties.

(b) The board shall advise the commission on medical criteria and vision standards relating to the licensing of drivers under the provisions of this act.

(c) The division, having cause to believe that a licensed driver or applicant may not be physically or mentally qualified to be licensed, shall notify the licensed driver or applicant and may obtain the advice of the board. The board may formulate its advice from records and reports or may cause an examination and report to be made by one (1) or more members of the board or any other qualified person it may designate. The licensed driver or applicant may cause a written report to be forwarded to the board by a physician of his choice and it shall be given due consideration by the board.

(d) If the board finds that a licensed driver or applicant is physically or mentally incompetent to drive a motor vehicle, the division may cancel the license of the licensed driver or refuse to issue any license to the applicant, after notice and hearing.

(e) Members of the board and other persons making the examination shall not be held liable for their opinions and recommendations presented pursuant to subsection (c) of this section.

(f) Reports received or made by the board, or its members, for the purpose of assisting the division and determining whether a person is qualified to be licensed are for the confidential use of the board or division and may not be divulged to any person or used as evidence in any trial except that the reports may be admitted in proceedings under subsection 31-276.26 (c) [§ 31-7-127 (c)] or section 31-276.32 [§ 31-7-128] of the statutes or any administrative or judicial proceeding arising under this act. Any person conducting an examination pursuant to subsection (c) of this section may be compelled to testify concerning his observations and findings in the proceedings. (Laws 1973, ch. 238, § 1.)

§ 31-7-122. Authority of division to cancel license.

The division is hereby authorized to cancel any driver's license or instruction permit upon determining that the licensee or permittee was not entitled to the issuance of the license or permit or that the licensee or permittee failed to give the required or correct information in his application. (Laws 1973, ch. 238, § 1.)

§ 31-7-123. Suspending privileges of nonresidents; reporting convictions, suspensions and revocations.

(a) The privilege of driving a motor vehicle on the highways of this state given to a nonresident hereunder shall be subject to suspension or revocation by the division in like manner and for like cause as a driver's license issued hereunder may be suspended or revoked.

(b) The division is further required upon receiving a record of the conviction in this state of a nonresident driver of a motor vehicle of any offense, to forward

CHAPTER 7

Driver's License Act

Sec.
31-7-102. Definitions.
31-7-107. Persons exempted.
31-7-109. Classes of licenses.
31-7-115. Expiration and renewal of license; reexamination required.
31-7-128. When revocation mandatory; period of revocation.

For legislative history of Driver's License Act and § 39-1-306, see Department of Revenue & Taxation v. Irvine, 589 P.2d 1295 (Wyo. 1979).

Cited in Department of Revenue & Taxation v. Irvine, 589 P.2d 1295 (Wyo. 1979).

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§ 31-7-102. Definitions.

(a) As used in this act:

(v) "Motorcycle" means every motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three (3) wheels in contact with the ground, excluding a tractor and golf cart. For purposes of this act, "motorcycle" includes mopeds as defined by W.S. 31-5-102 (a) (lvii);

(xviii) "This act" means W.S. 31-7-101 through 31-7-138.

(xix) "Pedestrian vehicle" means any self-propelled use of persons with a physical disability, but in no case shall any such vehicle:

(A) Exceed forty (40) inches in width;

(B) Produce in excess of twelve (12) brake horsepower; or

(C) Be capable of developing a speed in excess of twenty-five (25) miles per hour.

(Laws 1979, ch. 13, § 1; ch. 89, § 2.)

The 1979 amendments. — The first 1979 amendment, in subsection (a), deleted "unless the context otherwise requires or unless otherwise specifically noted" following "act" in the introductory paragraph, deleted "but" following "ground" in the first sentence and added the second sentence in paragraph (v) and substituted "31-7-101 through 31-7-138" for "31-276.1 through 31-276.37" in paragraph (xviii).

The second 1979 amendment added paragraph (xix) of subsection (a). While neither amendment gave effect to the other, except for the introductory paragraph in subsection (a) which is taken from § 1, ch. 13, Laws 1979, both have been given effect in this section as it is set out in this Supplement.

Only part of section set out. — As the rest of the section was not affected by the amendments, it is not set out in this Supplement.

Effective dates.

Section 2, ch. 13, Laws 1979, makes the act effective on May 25, 1979.

Section 2, ch. 89, Laws 1979, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved February 21, 1979.

§ 31-7-103. Administration and enforcement.

Wyoming tax commission is required to adopt rules of practice for the conduct of contested cases before it. Yolk v. Department of Revenue & Taxation, 585 P.2d 965 (Wyo. 1978).

Direct appeal from examiner to district court permitted. — No procedure having been provided by the state tax commission pursuant to § 9-4-102 or this section which would clarify

n revocation mandatory; period of evocation.

partment of Revenue & Taxation v. 2d 1286 (Wyo. 1979).

having a seat or saddle for ot more than three (3) wheels and golf cart. For purposes defined by W.S. 31-5-102 (a)

ugh 31-7-138.
repelled use of persons with such vehicle:

ake horsepower; or
in excess of twenty-five (25)

on § 1, ch. 12, Laws 1979, both have effect in this section as it is set out element.
t of section set out. — As the rest of was not affected by the amendments, t out in this Supplement.
dates.
, ch. 12, Laws 1979, makes the act May 25, 1979.
, ch. 89, Laws 1979, makes the act mediately upon completion of all sary for a bill to become law as art. 4, § 8, Wyo. Const. Approved 3, 1979.

ment.

peal from examiner to district ittal. — No procedure having been the state tax commission pursuant by this section which would clarify

and make plain to the persons affected what procedure must be followed to obtain the review required by § 31-7-105(b), § 31-7-105(c) is inoperative and void until such time as adequate procedural rules and regulations are adopted. In such case an intermediate appeal between the examiner and the district court does not exist and the petitioner may go directly to the district court from the examiner. Yelk v. Department of Revenue & Taxation, 586 P.2d 965 (Wyo. 1978).

§ 31-7-105. Independent hearing examiner.

Wyoming tax commission is required to adopt rules of practice for the conduct of contested cases before it. Yelk v. Department of Revenue & Taxation, 586 P.2d 965 (Wyo. 1978).

Implementation required. — Subsection (c) of this section, standing by itself, without implementation is meaningless. Yelk v. Department of Revenue & Taxation, 586 P.2d 965 (Wyo. 1978).

Direct appeal from examiner to district court permitted. — No procedure having been provided by the state tax commission pursuant to § 9-4-102 or § 31-7-103 which would clarify and make plain to the persons affected what procedure must be followed to obtain the review required by subsection (c) of this section, that subsection is inoperative and void until such time as adequate procedural rules and regulations are adopted. In such case an intermediate appeal between the examiner and the district court does not exist and the petitioner may go directly to the district court from the examiner. Yelk v. Department of Revenue & Taxation, 586 P.2d 965 (Wyo. 1978).

§ 31-7-107. Persons exempted.

(a) The following persons are exempt from the licensing requirement under this act:

(iv) Any person on active duty in the armed forces of the United States who has in his immediate possession a valid license issued in a foreign country by the armed forces of the United States may operate a motor vehicle in this state for a period of not more than forty-five (45) days from the date of his return to the United States.

Editor's note. — Paragraph (iv) of subsection (a) has been set out to correct a typographical error which appears in the original.

§ 31-7-108. Persons not to be licensed.

ALR3d reference. — Validity, construction, and application of age requirements for licensing of motor vehicle operators, 86 ALR3d 478.

§ 31-7-109. Classes of licenses.

(e) Any person licensed to operate any one (1) class of vehicle pursuant to subsection (c) of this section may operate a moped upon the streets and highways of this state.

(Laws 1979, ch. 12, § 1.)

The 1979 amendment added subsection (e).

Only part of section set out. — As the rest of the section was not affected by the amendment, it is not set out in this Supplement.

[illegible] note. — Section 2, ch. 12, Laws 1979, makes the act effective on May 25, 1979.

APPENDIX VI.

WYOMING MOTOR VEHICLE DIVISION FORM # 705

APPENDIX

"INFORMATION PRACTICES STATEMENT
"DRIVER'S LICENSE RECORDS

"1. Authority for collection of the information is the Driver's License Act, Sections 31-276.1 through 31-276.37 W.S.1957 as amended.

"2. The principal purposes for which this information is intended is to determine if you are qualified for a driver's license and able to operate a motor vehicle competently.

"3. This information is used to determine your qualifications for a driver's license, compile statistical data and law enforcement purposes.

"4. If the information requested is not furnished, you may not be able to establish your qualifications for a driver's license.

"I understand that this one time information practice statement will apply to all requests for personal information made by the Motor Vehicle Division of the Wyoming Department of Revenue and Taxation and commissioned law enforcement personnel of the State of Wyoming and of the United States of America. I understand that this form which I have signed, will be placed in my vehicle records as evidence of this notification. This is my consent to obtain information from any source which may affect my qualifications for a driver's license. I understand I can receive additional copies upon request for my own purposes.

"DEPARTMENT OF REVENUE & TAXATION
"RULE AND REGULATION

"Signature of applicant _____

"Date signed: _____"

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OFFICE OF THE CLERK
SUPREME COURT, U.S.

No. 81-6912

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1982

DAVID J. SCHOLL, Appellant,

v.

RUDOLPH ANSELMI, R. A. HAKALA, and DORAN LUMMIS, as individuals and as THE WYOMING TAX COMMISSION and DANIEL C. LEACH, JR., as an individual and as the DIRECTOR OF THE MOTOR VEHICLE DIVISION, DEPARTMENT OF REVENUE AND TAXATION, STATE OF WYOMING, Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF WYOMING

MOTION OF APPELLEES TO DISMISS OR AFFIRM

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RUDOLPH ANSELMI, R. A. HAKALA, and DORAN LUMMIS, as individuals and as THE WYOMING TAX COMMISSION and DANIEL C. LEACH, JR., as an individual and as the DIRECTOR OF THE MOTOR VEHICLE DIVISION, DEPARTMENT OF REVENUE AND TAXATION, STATE OF WYOMING, Appellees.

MOTION TO DISMISS OR AFFIRM

The Appellees move the Court to dismiss the appeal herein or, in the alternative, to affirm the judgment of the Supreme Court of the State of Wyoming on the grounds that it is manifest that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument, that the appeal is not taken in conformity with statute and the Rules of this Court, that no substantial federal question is presented, that the judgment rests on an adequate non-federal basis and that several issues are moot. Rule 16.1.

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STATEMENT OF THE CASE

The Appellant David J. Scholl applied for renewal of his Wyoming driver's license on or about December 13, 1978, at Buffalo, Wyoming. The State of Wyoming Motor Vehicle Division officer in Buffalo requested that the Appellant complete the standard license application form, but Appellant refused to supply his social security number. The officer refused to issue the Appellant a driver's license because the form was not complete; however, the Appellant successfully completed all other requirements, including the examination, for issuance of a driver's license.

The Appellant also protested the Division requirement that license applicants must sign an Information Practices Statement. Signing of this form serves two functions: the signing confirms notice to applicants that the Division may make inquiry as to his or her physical and mental abilities to safely operate motor vehicles and investigate each applicant's prior driving records. The signing of the form also grants consent to the Division to obtain pertinent records from medical and psychiatric clinics and hospitals (including government hospitals such as those operated by the Veteran's Administration), Motor Vehicle Divisions in other states, law enforcement authorities and whatever other sources the Division believes may hold records pertinent to an applicant's ability to safely and competently operate motor vehicles. The Appellant did sign an Information Practices Statement on the date of his

application, however, and appended thereto the legend "I do not waive any Constitutional rights."

The Appellant thereafter communicated to the Motor Vehicle Division and to the members of the Tax Commission his reasons for refusing to disclose his social security number, which reasons are religious in nature. The Motor Vehicle Division director and the Tax Commission did not believe it appropriate to waive the requirement for disclosure of social security numbers, citing a need for uniform interstate record-keeping.

The Appellant applied to the District Court for a Writ of Peremptory Mandamus to compel the Motor Vehicle Division to issue a license to him without disclosure of the social security number. He also complained that signing of the Information Practices Statement by license applicants is not authorized by law and constitutes an invasion of Constitutionally-protected rights of privacy. The Division consented to issue a license to the Appellant pending resolution of the matter in District Court. The District Court issued an order on July 11, 1980, permitting the Appellant to operate a motor vehicle pending the final determination of the matter on the merits. The Appellant did not have a valid Wyoming driver's license during the interim period from December of 1978 to July 11, 1980.

The Appellant filed his Petition for Writ of Mandamus on June 2, 1980, joining prayers for relief in several forms, including:

a. That the Motor Vehicle Division

issue a renewed license to Petitioner;

B. That the Division invalidate and remove from its files all Information Practices Statements signed by applicants for licenses, and that subsequent applicants must be informed that they are not required to sign the Information Practices Statement;

c. That the Division cease requiring applicants to supply social security numbers on license application forms;

d. That the Division reimburse Petitioner for costs of bringing the action and for damages, including $150.00 for the costs of "seeking remedy prior to this action," $3,000.00 for "reasonable attorney's fees and for legal research," $5,000.00 "to reimburse Petitioner for income lost due to time spent seeking remedy and bringing this action," $10.00 per day from the day application was made for license for "inconvenience and added costs to Petitioner caused by Respondent's failure to renew said license," and $35,000.00 "punitive damages," and that the Respondents be held collectively and severally and individually for these costs and "damages."

The Appellant thereafter contacted the Assistant Attorney General representing the Motor Vehicle Division and Tax Commission, and requested that the matter by submitted on briefs without oral argument, which was done. The Appellant also supplied to counsel a proposed stipulation of facts, which was agreed to without modification. The stipulation of facts was submitted to the Court and its decision was based thereon. (See the Opinion of the Wyoming Supreme Court for the text of the stipulation.) No additional facts were placed in the record by Appellant or

by the Respondents. There were no facts presented to the Court supporting or justifying an award of damages or attorney fees, nor was any evidence offered that any person, including the Appellant, had been compelled to sign the Information Practices Statement, nor that any person had suffered any injury to his or her rights or interests flowing from the signing of one of these forms.

The District Court of the First Judicial District entered a letter decision on May 1, 1981, concluding that Appellant was correct in his assertion that the Division lacks statutory or rule authority to require disclosure of social security numbers by license applicants. Judge Maier concluded that the Writ should be issued. Thereafter the parties submitted proposed forms of judgment; the Appellant's proposed form of writ and judgment included a requested award of damages. The Appellant also wrote to the Court on May 26, 1981, requesting an award of damages. The Appellant did not supply any authorities to the Court supporting his contention that the Information Practices Statement authorized unconstitutional or overbroad investigations by the Motor Vehicle Division, or that such investigations infringed upon his constitutionally protected rights of privacy.

The District Court entered an order on June 24, 1981, allowing a Peremptory Writ of Mandamus directing the Respondents to issue a driver's license to Appellant without disclosure of his social security number. The Court also found that the Division has statutory authority to require license applicants to consent to the Division's

obtaining records dealing with applicants' qualifications to safely operate motor vehicles.

On July 8, 1981, District Judge Maier wrote to Appellant that the Court would not approve his proposed form of writ because it included attorney's fees and legal research "costs," among other things, in the "bill of costs."

The Appellant filed a notice of appeal to the Supreme Court of the State of Wyoming on July 6, 1981.

On September 25, 1981, the Division of Motor Vehicles issued a Class C driver's license to the Appellant.

On February 11, 1982, the Supreme Court of the State of Wyoming issued its opinion affirming the Order and Judgment entered by the District Court.

On March 30, 1982, the Appellant filed his Notice of Appeal to the Supreme Court of the United States.

(The opinions and orders of the Wyoming Courts are attached hereto as Appendix A.)

JURISDICTION

It appears that the Appellant has proceeded improperly in lodging an appeal rather than petitioning the Court for a Writ of Certiorari. The Wyoming Supreme Court has not declared invalid any federal law, nor has the court upheld the validity of any state statute challenged by the Appellant as being repugnant to the Constitution or other laws of the United States. Thus an appeal does not lie as provided at 28 U.S.C. Section 1257 (1) or (2).

The Appellant consistently attempted, before the trial court and the Wyoming Supreme Court, to claim certain rights under the Constitution of the United States. To the extent that these claims may have been perfected, denial of the same may be brought before this Court through a Petition for Writ of Certiorari, 28 U.S.C. Section 1257(3). Appellees argue below that these claims have not been perfected and that certiorari should not be granted herein.

Further, for reasons stated below, Appellees believe that Appellant has not raised any substantial federal question that requires this Court's attention through appeal or writ of certiorari. Accordingly, whether the Appellant's papers are treated as bringing an appeal or petitioning for certiorari is not significant in either case, as the lack of a substantial federal question is dispositive. Flournoy v. Wiener, 321 US 253, 262, 263.

The Wyoming courts did not need to consider or decide the validity of any state or federal statute, as

none were challenged by the Appellant.

The Appellant has presented issues which may appear to contain claims of rights or privileges under the United States Constitution. To the extent that these claims exhibit substantive merit, they might support the granting of certiorari. The state courts, however, decided the issues raised below by reference to state law. Appellees believe that, with respect to each issue raised by the Appellant, there exists an adequate non-federal basis for decision by the Wyoming Courts.

Further, as procedural and jurisdictional matters, Appellant's claims of federal-law rights were not properly presented below. For example, the Appellant offered no evidence before the trial court that supports a claim for damages, or that supports a claim for declaratory judgment that his "right of privacy" was invaded or limited. (Questions I and IV as presented by the Appellant.) This lack of proof led the trial court and the Wyoming Supreme Court to consider these claims to be moot. Accordingly, they did not choose to render an advisory opinion as to whether the Appellant's rights of due process might have been infringed upon. (Question II as presented by the Appellant.)

For another example, the Appellant claims a denial of due process by the Appellees' failure to provide a hearing on the matter of denial of his license application. Yet the Appellant never requested a hearing. The Appellant has shown no basis for an automatic hearing without request. Whether a hearing request would have been denied

is not a ripe issue. The disposition of the Appellant's claims rest upon the following non-federal grounds:

I. As to whether the Appellant must sign an Information Practices Statement, the issue is moot, as the Appellant has signed the form. Further, the Appellant has presented no evidence that any rights have been invaded, denied or threatened by the Appellees' use of the form.

II. As to whether due process was denied to the Appellant by a "rule" requiring his signing of the form, this issue is moot because the Appellant signed the form. Again, no evidence has been presented indicating that the Appellant has been deprived of any right or privilege (with or without due process) with respect to the Appellees' use of the form. The "due process" issue was raised in the Appellant's pleadings but no proof to support his argument was adduced.

III. As to whether the failure to provide a hearing denied the Appellant some rights or privileges without due process, the issue has not been properly presented. No request for hearing was ever received by the Appellees, and it would be speculative to argue that such a request would be turned down.

IV. As to whether damages may be awarded without proof, the Appellant arguing that his verified petition for a writ of mandamus is equivalent to proof, the Wyoming courts found that he failed to meet his burden of proof. As a matter of state and federal law, competent evidence is required to support an award of damages.

V. As to whether the Appellant, appearing pro se, is entitled to attorney's fees, the issue is governed by state law unless the litigant prevails on a question of federal right. The record reflects no success by the Appellant with respect to his federal-law claims. Further, the Appellant incurred no costs for professional legal services.

Questions Presented by the Appellant

> I. Whether the Appellees may require, as a condition for obtaining a Wyoming Driver's License, that all applicants sign an "INFORMATION PRACTICE STATEMENT" which is a waiver of privacy giving the Appellees permanent, irrevocable permission to obtain all personal information from any source which they wish to obtain.

Two comments are in order prior to analyzing this issue for presence of a federal question. First, Appellees regard this description of their use of the named form as exaggerated. Generally the Division of Motor Vehicles (DMV) attempts to obtain as much needed information as possible directly from applicants for driver's licenses.

Second, the Appellant placed no evidence in the record showing that the DMV uses the form to violate any license applicant's protected zones of privacy, however such zones may be defined in terms of state or federal law.

Most importantly, the Wyoming Supreme Court found the Appellant's complaints about use of the form to be moot. The Appellant has twice signed the form, once when originally licensed and again in December, 1978. This fact is shown in the record before the Wyoming Supreme Court and is referred to in that court's opinion. No federal question is implicit in a dispute of that court's finding of mootness. In the complete absence of evidence in the record below that the Appellant's "right of privacy," however broadly defined, had in fact been invaded or compromised, the Wyoming Supreme Court found no issue to be pre-

sented for decision.

Whether federal law defines rights of privacy for license applicants which state motor vehicle regulators may not invade is not properly framed as an issue here. The Appellant has consented to DMV access to relevant records, and has not shown that such consent has been abused or even used. Whether the Appellees may deny issuance of a license for failure to sign the form is not properly an issue here, for no such denial has occurred. The Wyoming Supreme Court wisely declined to render an advisory opinion to the DMV regarding this form. No invasion or denial of a ripe right claimed under the U.S. Constitution or the Federal Privacy Act has occurred, thus this Court has not been presented with an appealable issue.

II. Whether due process of law was denied when the rule requiring the signing of the "Information Practice Statement" was imposed without following the rule making procedures required by the Wyoming Administrative Procedures Act.

This issue involves interpretations of the Wyoming Administrative Procedures Act. Whether due process is involved at all requires a search for a property or liberty interest or other right of similar stature, and a further search for a deprivation of such a right or interest held by the Appellant. The Appellant "raised" the due process issue in his pleadings, but failed to show facts or law indicating that his rights, interests or entitlements under state or federal law were in fact injured or compromised without due process. Without such a showing, the issue lacks foundation in federal law. Even if the Appellant had shown some injury, the interpretation of the rule-making requirements of the Wyoming Administrative Procedures Act is a matter of state law, unless an invasion of federal constitutional right is shown.

The courts treated this issue as mooted by the Appellant's voluntary signing of the form. The courts declined to decide whether rulemaking was necessary to provide the Appellant due process. The issue was poorly presented. If the courts had addressed the issue, it would doubtless have examined the Wyoming Administrative Procedures Act (W.S. 9-4-101, et seq,) and the due process requirements of the state Constitution, Article I, Section 6. It would be premature to speculate as to how the Wyoming courts would determine these issues in a proper

case.

Because the question framed by the Appellant refers generally to due process and specifically to state statutes governing rulemaking, it cannot be said that the question does not refer to state law, particularly the state constitutional due process clause. See Bowe v. Scott, 233 U.S. 658, 665, (1914).

It cannot be said that the decision of the Wyoming courts with respect to this question does not rest upon an adequate non-federal ground. Indeed, the courts declined to pass on the issue. When the state's highest court fails to decide a federal question, it may be assumed that the omission was due to lack of proper presentation. Street v. New York, 394 U.S. 576, 582 (1969); Fuller v. Oregon, 417 U.S. 40, (1974).

III. Whether due process of law was denied when the Appellees failed to provide the Appellant a hearing, for a period of over one and one-half years, to review the denial of his license application, as required by the Wyoming Administrative Procedures Act.

Arguably a license applicant who is denied renewal or issuance of a driver's license might be entitled to a hearing regarding the grounds for denial. The contours of such a hearing might include issues of who is entitled, under state law, to issuance of a license, and grounds, under state law, for denial of a license. If denial of a license were said to transgress upon federally-protected rights or privileges, the denial might trigger certain rights of due process under federal principles. Unfortunately for the Appellant, these issues must be regarded as speculative and academic in this case, as the Appellant never requested nor demanded such a hearing. Whether the DMV would have denied the hearing is not an issue, nor is whether such a denial would deprive the Appellant of any rights or entitlements without due process. The Appellant preferred to write letters and place telephone calls and make informal personal visits, in abundance, to the DMV offices in the state capital. He chose not to request a hearing, but now complains of the failure of the DMV, sua sponte, to give him a hearing anyway.

No federal question of denial of due process is presented by this state of facts.

IV. Whether the facts in the case are sufficient to warrant the award of general damages, and whether the signed, sworn, and notarized statement by the Appellant concerning, the harm caused by the Appellees refusal to issue the license was sufficient and proper to warrant the award of special damages.

Again, in a proper case, a license applicant who is denied driving privileges might be entitled to prove and recover damages. Such an issue would be resolved by reference to state laws defining the contours of rights to operate motor vehicles on public highways, and state-law rules of damages. Whether such damages might include compensation for injury to federally-protected rights (illustrative examples do not readily come to mind), thus putatively amounting to a cause of action under 42 USC Section 1983, is not an issue here.

The plain fact is that the Appellant failed to offer any evidence of damages, special, general or otherwise. This failure is grounds, under state law, for a decision to not award damages, a principle also followed in federal courts. See, in the context of 42 U.S.C. Section 1983 actions, Familias Unidas v. Briscoe, 619 F.2d 391, 402 (5th Cir. 1980), citing Carey v. Piphus, 435 U.S. 247, (1978).

Even if, arguendo, the Appellant had suffered damages to his federally-protected civil rights, his failure to prove them bars recovery.

Where the judgment of a state court rests in part, or in whole, on a non-federal ground adequate to support

it, the Court will not consider the correctness of the decision which the state court also made of a federal question. Flourney v. Wiener, 321 U.S. 253, 262 (1943). The Wyoming Supreme Court's decision on this issue is adequately and properly grounded in state law.

V. Whether a litigant in a civil rights suit acting pro se is entitled to the award of reasonable attorney's fees under 42 U.S.C. 1988.

42 U.S.C. Section 1988 authorizes award of attorney fees to those parties who prevail on a substantial question of Constitutional or federal right. Barrett v. Kalinowski, 458 F.Supp. 689, 704 (M.D.Pa.,1978); Hughes v. Repko, 578 F.2d 483 (3rd Cir. 1978).

The Appellant has incurred no legal expenses, at least by traditional definition, but he claims to have spent considerable time and some money to bring these issues to their present status. The Appellees do not dispute that the Appellant has put a lot of time into these appeals. The Wyoming Supreme Court affirmed the trial court's denial of professional fees, affirming for the reason that the Appellant paid no fees.

The Appellant raises the issue for the court, as a federal question: Is a litigant Pro Se entitled to an award of fees under 42 U.S.C. Section 1988? Unfortunately, the issue is not properly presented in the case, for the Appellant has not prevailed on any federal-law right warranting an award of fees. If the Appellant had prevailed on a 42 U.S.C. Section 1983 claim or another comparable federal issue, and had then been denied fees, the issue of "pro se" fees would be clearly presented for the court's attention.

But because the Appellant did not prevail on any federal issue, the question of award of attorney fees

remains a state-law question, and in Wyoming, fees are not generally awarded.

CONCLUSION

The judgment at the Wyoming courts rests on state law regarding:

1. Mootness;
2. Quantum of proof,
3. Administrative interpretations, and
4. Attorney's fees.

It is therefore submitted that the Appellant has presented no substantial federal question for the decision of this Court. The appeal should be dismissed or, if treated as a petition for writ of certiorari, the petition should be denied, and the judgment of the Wyoming courts should be affirmed.

Respectfully submitted this 9th day of July, 1982.

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IN THE SUPREME COURT, STATE OF WYOMING

OCTOBER TERM, A.D. 1981

February 11, 1982

THE STATE OF WYOMING, ex rel. DAVID J. SCHOLL,

Appellant (Relator),

v.

RUDOLPH ANSELMI, R.A. HAKALA, and DORAN LUMMIS, as individuals and as The Wyoming Tax Commission, and DANIEL C. LEACH, JR., as an individual and as Director, Motor Vehicle Division, Department of Revenue and Taxation, State of Wyoming,

Appellees (Respondents).

No. 5564

Appeal from the District Court of Laramie County, the Honorable Joseph F. Maier, Judge.

David J. Scholl, appellant, pro se.

Steven F. Freudenthal, Attorney General; Ron Arnold, Assistant Attorney General; and Randall T. Cox, Assistant Attorney General, Cheyenne, for appellees.

Before ROSE, C.J., and RAPER, THOMAS, ROONEY and BROWN, JJ.

NOTICE: This opinion is subject to formal revision before publication in Pacific Reporter Second. Readers are requested to notify the Clerk of the Supreme Court, Supreme Court Building, Cheyenne, Wyoming 82001 of any typographical or other formal errors, in order that corrections may be made before final publication in the permanent volume.

BROWN, Justice.

This appeal is from that portion of a judgment and order of the district court dated June 24, 1981, denying appellant damages and attorney fees.

We will affirm.

Appellant specifies the issues: 1/

"1. Is the rule requiring signing of the 'Information Practice Statement' on appellees [sic] form 'MVDL-705 (2-80)' authorized, implicitly or explicitly, by Wyoming Statutes?

"2. If authorized by statutes, is the requirement that such a statement must be signed in order to obtain a Wyoming Driver's License a 'rule' under the definition of the Wyoming Administrative Procedure Act? If so, may the rule be imposed without adoption in accordance with the Wyoming Administrative Procedure Act?

"3. If authorized and properly adopted as a rule, is the 'Information Practice Statement' an unconstitutionally overbroad waiver of rights to privacy and confidentiality?

1/ Appellees characterize the issues slightly different ly:

"1. Whether, under the facts as stated, the Appellant may obtain an award of damages, despite his complete failure to offer evidence of damages to the District Court.

"2. Whether any rights protected by the U.S. Constitution and federal statutes were diminished by the Appellees' acts regarding Appellant.

"3. Whether sovereign and official immunity bar a recovery of damages by Appellant in light of his non-compliance with the Wyoming Governmental Claims Act and statutes of limitations.

"4. Whether the District Court erred in denying mandamus relief with respect to the information practices of Appellees.

"5. Whether the District Court erred in denying Appellant attorney fees."

"4. Is appellant entitled only to court costs? Or h!s [sic] he entitled to his costs seeking administrative remedy, his costs in preparing and bringing the action, and compensation for damages incurred due to Appellees [sic] actions and failures to act, including punitive damages?"

Appellant David J. Scholl applied for renewal of his Wyoming driver's license on or about December 13, 1978. The local Motor Vehicle Division officer requested that appellant complete the standard license application form, but appellant refused to supply his social security number. The officer refused to issue appellant a driver's license because the form was not complete; however, appellant successfully completed all other requirements for issuance of a driver's license, including the examination.

Appellant also protested the requirement that license applicants must sign an "Information Practices Statement," which is part of the application for driver's license form MVDL (11-77). (See Appendix.) Appellant signed the Information Practices Statement on the date of his application, but added the legend, "I do not waive any Constitutional rights."

Appellant communicated to the Motor Vehicle Division and to the members of the Wyoming Department of Revenue and Taxation his reasons for refusing to disclose his social security number, which reasons are religious. The Motor Vehicle Division Director and the Wyoming Department of Revenue and Taxation upheld the action of the field officer in refusing to renew appellant's driver's license.

Appellant then applied to the district court for a writ of mandamus to compel the Motor Vehicle Division to issue a license to him without disclosure of the social security number. He also argued in the petition that signing of the Information Practices Statement by license applicants is not authorized by law and constitutes an invasion of constitutionally protected rights of privacy. The Motor Vehicle Division agreed to issue a license to appellant pending resolution of the matter in district court. The district court issued an order on July 11, 1980, permitting appellant to operate a motor vehicle pending the final determination of the matter on the merits. Appellant did not have a valid Wyoming driver's license during the interim period from December of 1978 to July 11, 1980.

Appellant filed his Amended Petition for Writ of Mandamus on July 7, 1980, in which he asked for relief in several forms, including:

1. That the Motor Vehicle Division issue a renewed license to petitioner;

2. That the Division invalidate and remove from its files all Information Practices Statements signed by applicants for licenses, and that subsequent applicants must be informed that they are not required to sign the Information Practices Statement;

3. That the the Division cease requiring applicants to supply social security numbers on license application forms;

4. That the Division reimburse Petitioner for costs of bringing the action and for damages, including $150.00 for the costs of "seeking remedy prior to this action," $3,000.00 for "reasonable attorney's fees and for legal research," $5,000.00 "to reimburse Petitioner for income lost due to time spent seeking remedy and bringing this action," $10.00 per day from the day application was made for license for "inconvenience and added costs to Petitioner caused by Respondent's failure to renew said license," and $30,000.00 "punitive damages," and that the respondents be held collectively and severally and individually for these costs and "damages."

Appellant and an assistant attorney general entered into a stipulation and submitted the matter to the district court on the stipulation and briefs without oral argument. The Stipulation was as follows:

"1. That on or about December 13, 1978 David J. Scholl did apply for renewal of his Wyoming Driver's License at the Buffalo office of the Department of Motor Vehicles.

"2. That Mr. Scholl did pass all required examinations for renewal of said license.

"3. That Mr. Scholl's driving record shows him to be in good standing and eligible for renewal of his license.

"4. That Mr. Scholl objected, and still objects, to the use of a Social Security number on the application and license, and to the signing of a waiver which authorizes the Department to obtain information from any source which the Department believes may relate to driving records.

"5. That the Department's agent refused to accept the application and issue a new license

without the Social Security number and such a signed waiver.

"6. That the agent's actions were based on a rule, regulation, or memo issued by the department.

"7. That Mr. Scholl has made numerous and repeated efforts to have his license renewed, including telephone calls and letters to the Dirctor [sic] of the department, to each of the Tax Commissioners, and to the Attorney General's Office. (See copies of letters on file in the [illegible] District Court.)

"8. That as late as June 25, 1980, no copy of the rule, regulation, memo, or interpretation of the law which the department invoke [sic] against Mr. Scholl to compel disclosure of his Social Security number and signing of a waiver in order to renew his license was on file in the Office of the Secretary of State.

"9. That each of the defendants is aware, or should be aware, of Mr. Scholl's objections based on religious beliefs and assertion of Constitutional Rights, as well as statutory procedures.

"10. That the department continues to refuse to issue a renewed license to Mr. Scholl without use of the Social Security number and signing of the above mentioned waiver."2/

The district court concluded in its decision letter that the Motor Vehicle Division lacked statutory or rule authority to require disclosure of social security numbers by license applicants and that the writ should be issued. The appellant and State could not agree on the form of the writ because of appellant's damage and attorney fee demand.

The district court entered its order on June 24, 1981, allowing a peremptory writ of mandamus directing respondents to issue a driver's license to appellant without his social security number

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2/ Apparently the stipulation did not accurately reflect the Motor Vehicle Department's action with respect to the Information Practices Statement. Appellant did sign the statement on December 13, 1978; therefore, the license was not denied because of his failure to sign the statement as may have been suggested by the Stipulation. Appellees took the necessary steps to make this correction in the record on appeal.

on the license. It denied appellant's claim for damages, but allowed him to recover his costs. The court also found that the Motor Vehicle Division has statutory authority to require license applicants to sign the Information Practices Statement.

Appellant filed a timely notice of appeal.

I

In his brief appellant addresses numerous issues in great detail. Appellee addresses these issues and raises other matters by way of defense, such as sovereign and official immunity, Wyoming governmental immunity, statute of limitations, filing of claims with the State Auditor, and others. In their briefs the parties discuss the requirement of social security number disclosure; however, appellant prevailed on that issue in the district court and the State has not appealed that ruling.

The issue raised by appellant regarding signing the Information Practices Statement is moot. Appellant signed the statement voluntarily when he applied for a license, although he noted that he was not waiving his constitutional rights. He does not claim that he was coerced. Further, he does not allege any damage resulting from signing the statement. The record does not indicate that the Motor Vehicle Division ever used this statement for improper purposes, or for any purpose. Appellant is apparently asking this Court to declare that he and other future driver's license applicants not be required to sign an Information Practices Statement. We decline to address that issue, if it is an issue, because our thoughts on that matter would only be advisory.

The consequences of an applicant's refusal to sign the Information Practices Statement have never been at issue in these proceedings. We believe that the only issue properly raised by appellant is the refusal of the district court to allow appellant damages and attorney fees.

II

Appellant alleges that he was damaged because appellees violated many of his United States constitutional rights. He cited specific constitutional provisions in his Petition for Writ of Mandamus. He did not mention 42 U.S.C.A. § 1988 (1981) in his Petition for a Writ of Mandamus, but does in his brief to this Court, attempting now to invoke that section as authority for his claim to damages. He also claimed that Wyoming constitutional and statutory rights were violated by appellees, and again directed the court's attention to specific constitutional and statutory provisions.

We need not address the propriety of appellant's action for damages. We will assume for purposes of this opinion that in a

proper case damages could be awarded, but this case should be decided on the narrow issue of proof of damages.

Appellant requested that this case be submitted to the district court on stipulated facts and briefs. Damages are not mentioned in the stipulation, and nothing is said about damages unless telephone calls made by appellant and letters written suggest some expense. However, the Stipulation did not indicate a dollar expense, nor did it say that he incurred any expense. Appellant did allege expenses and indicate a dollar figure in his Petition for a Writ of Mandamus, but that is pleading, not evidence. There was no testimony taken in this case and the only evidence before the district court was the parties' stipulation.

Appellant has entirely overlooked the necessity of proving damages. He apparently equates pleading damages with the proof of damages. We know of no cases nor statutes that permit damages based solely on an allegation of damages. Damages cannot be presumed. One who claims damages has the burden of proving them. 3/ Consequently, absent proof, a claim for damages fails. Quinlan v. Jones, 27 Wyo. 410, 198 P. 352 (1921). See also West's digest, § 163(1)(3) "Damages" for scores of cases supporting this fundamental principle:

> * * * * Generally speaking, the party who would lose if no evidence were presented as to an issue regarding damages is charged with the burden of proving that issue. As a rule, the burden of proof is upon the plaintiff to show the fact and extent of the injury and to show the amount and value of his damages, whether the action is for a breach of contract or for tort. In a damages action, where issue is taken the plaintiff must show not only that he suffered damage because of the wrongful act complained of, but also that it would not have been incurred except for the wrongful act of the defendant, if he would recover more than nominal damages. * * * * 22 Am.Jur. Damages § 296, p. 392 (1965).

Appellant's claim for damages must fail in the absence of any proof.

3/ There may be some exceptions to this abstract rule such as nominal damages, liquidated damages, damages provided for by statute, etc. However, appellant has not brought to our attention applicable exceptions, nor does he claim any exceptions from the general law. We have searched for an exception that might be applicable here, but know of none.

III

Appellant appeared pro se at all stages of this case. He nevertheless claims attorney fees in connection with the proceedings in the district court and on appeal. A flaw in appellant's theory is that he has not only failed to prove attorney fees, but does not even claim that he incurred such fees. Although he claims attorney fees, appellant is really claiming the value of his time in connection with this case. He does not indicate how much time he spent. Supplying that deficiency, however, would not enhance his cause.

The rule regarding attorney fees generally is set out in Alyeska Pipeline Service Company v. Wilderness Society, 421 U.S. 240, 95 S.Ct. 1612, 44 L.Ed.2d 141 (1975):

> "In the United States, the prevailing litigant is ordinarily not entitled to collect a reasonable attorneys' fee from the loser. We are asked to fashion a far-reaching exception to this 'American rule'; but having considered its origin and development, we are convinced that it would be inappropriate for the Judiciary, without legislative guidance, to reallocate the burdens of litigation in the manner and to the extent urged by respondents and approved by the Court of Appeals."

See also Downing v. Stiles, Wyo., 635 P.2d 808, 817 (1981).

Apparently appellant seeks to recover "attorney fees" for his suit, under 42 U.S.C.A. § 1988, supra, which provides in part:

> " * * * In any action or proceeding to enforce a provision of sections 1981, 1982, 1983, 1985, and 1986 of this title, title IX of Public Law 92-318, or title VI of the Civil Rights Act of 1964, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs."

The purpose of statutory provisions for attorney fees is to encourage those who otherwise could not afford legal counsel to hire professional assistance, rather than forego their "day in court." Appellant was not discouraged by a perceived lack of financial resources; he had his day in court by bringing the action pro se. The purpose of encouraging employment of counsel could not possibly be advanced by awarding the appellant fees for professional services in this case. The Civil Rights Attorney's Fees Act does not justify a payment when it is not needed as an incentive for legal services.

The question of whether a litigant appearing pro se is entitled to attorney fees under 42 U.S.C.A. § 1988, supra, was addressed by the Eighth Circuit in Davis v. Parratt, 608 F.2d 717 (8th Cir. 1979). The court noted that the legislative history of 42 U.S.C.A. § 1988, supra, reveals that its purpose is not to compensate pro se litigants, but to provide for counsel fees in order to give private citizens a meaningful opportunity to vindicate their rights:

> "In many cases arising under our civil rights laws, the citizen who must sue to enforce the law has little or no money with which to hire a lawyer. If private citizens are to be able to assert their civil rights, . . . [they] must have the opportunity to recover what it costs them to vindicate these rights in court.
>
> "S.Rep.No.49-1011, 94th Cong., 2d Sess. 2, reprinted in [1976] U.S.Code Cong. & Ad. News, pp. 5908, 5910. See Morrow v. Dillard, 580 F.2d 1284, 1299 (5th Cir. 1978); Sargeant v. Sharp, 579 F.2d 645, 648-49 (1st Cir. 1978); see also Pickette v. Milam, 579 F.2d 1118, 1121 (8th Cir. 1978); Planned Parenthood of Minnesota, Inc. v. Citizens for Community Action, 558 F.2d 861, 870-71 (8th Cir. 1977). This section presupposes a relationship of attorney and client that is lacking in the instant case. The district court properly denied Davis' application for attorney fees." Davis v. Parratt, supra, at 718.

In Lovell v. Snow, 637 F.2d 170, 171 (1st Cir. 1981), the court said:

> "We have recently held that attorney fees may not be awarded to pro se plaintiffs pursuant to the attorney fee provisions of the Freedom of Information Act (FOIA), 5 U.S.C. Section 552(a)(4)(E). Crooker v. United States Department of Justice, 632 F.2d 916, 920-22 (1st Cir. 1980). Our starting point there, as here, was the intent of Congress. We identified the dominant purpose of the FOIA's attorney fee provision as the removal of 'the obstacle of attorney fees [so that] all litigants have 'access to the courts to vindicate their statutory rights.' [Citation omitted.] Precisely the same policy lay behind the enactment of the Civil Right Attorney's Fee Awards Act, 42 U.S.C. § 1988. [Citations omitted.] In light of this identity of statutory policies, the reasoning which we set forth in Crooker, supra, 632 F.2d

> at 920-22, fully applies in the case of a pro se plaintiff's request for attorney fees pursuant to 42 U.S.C. Section 1988. It need not be repeated here."

See also Owens-El v. Robinson, 498 F.Supp. 877 (W.D.Pa. 1980); and Rheuark v. Shaw, 477 F.Supp. 897 (N.D.Tex. 1979), cert. denied 101 S.Ct. 1392 (1981). Both deny attorney fees because the litigants appeared pro se.

The appellant in this case has not retained counsel. He has incurred no actual expense for professional services, and an award of "fees" for professional services to appellant would constitute a windfall. The district court did not award attorney fees, and appellant has shown no reasonable grounds to reverse the district court.

Affirmed.

APPENDIX

"INFORMATION PRACTICES STATEMENT
"DRIVER'S LICENSE RECORDS

"1. Authority for collection of the information is the Driver's License Act, Sections 31-276.1 through 31-276.37 W.S.1957 as amended.

"2. The principal purposes for which this information is intended is to determine if you are qualified for a driver's license and able to operate a motor vehicle competently.

"3. This information is used to determine your qualifications for a driver's license, compile statistical data and law enforcement purposes.

"4. If the information requested is not furnished, you may not be able to establish your qualifications for a driver's license.

"I understand that this one time information practice statement will apply to all requests for personal information made by the Motor Vehicle Division of the Wyoming Department of Revenue and Taxation and commissioned law enforcement personnel of the State of Wyoming and of the United States of America. I understand that this form which I have signed, will be placed in my vehicle records as evidence of this notification. This is my consent to obtain information from any source which may affect my qualifications for a driver's license. I understand I can receive additional copies upon request for my own purposes.

"DEPARTMENT OF REVENUE & TAXATION
"RULE AND REGULATION

_____
"Signature of applicant

"Date signed:_____"

STATE OF WYOMING)
) SS:
COUNTY OF LARAMIE)

IN THE DISTRICT COURT

FIRST JUDICIAL DISTRICT

CIVIL DOCKET NO. 91-143

THE STATE OF WYOMING, upon the relation of DAVID J. SCHOLL,

Relator,

v.

RUDOLPH ANSELMI, R.A. HAKALA, and DORAN LUMMIS, as individuals and as

THE WYOMING TAX COMMISSION

and

DANIEL C. LEACH, JR., as an individual and as

DIRECTOR, MOTOR VEHICLE DIVISION DEPARTMENT OF REVENUE AND TAXATION, STATE OF WYOMING,

Respondents.

FILED

JUN 24 1981

Gerrie E. Bishop
Clerk of the District Court

JUDGMENT AND ORDER OF ALLOWANCE OF PEREMPTORY WRIT OF MANDAMUS

Relator's Petition for Writ of Mandamus was filed in the above entitled matter on the 3rd day of June, 1980, and the matter having been set for hearing before the Court on the 18th day of June, 1980, at 3:00 P.M., and said hearing having thereafter been continued by Order of the Court and based upon a stipulation and agreement of the parties by which the parties stipulated and agreed to the facts and to a submission of the matter upon briefs, and the Court having thereupon fully reviewed the pleadings, the stipulation of facts and the briefs and arguments of counsel and being now fully advised, the Court finds as follows:

1. That relator, David J. Scholl, did apply for renewal of his Wyoming driver's license on or about December 13, 1978;

2. That relator did successfully complete his required examination and all acts necessary for the issuance of a driver's license;

3. That respondents refused to renew relator's driver's license on the basis that relator refused to disclose his social security number and refused to allow the same to be placed on his driver's license;

4. That the relator further refused to give his consent to the respondents so that the division might obtain records dealing with his qualifications to safely operate a motor vehicle;

5. That the respondents relied on the provisions of §31-7-111, W.S., 1977 Republished Edition as the basis for their requirement that relator furnish a social security number to be placed on his driver's license;

6. That §31-7-106(e), W.S., 1977 Republished Edition, expressly mandates that the division shall issue a driver's license to each qualified applicant not later than thirty (30) days from the date of application therefor;

7. That there is no statute, either expressly or by necessary implication, granting to the Motor Vehicle Division the right to require on the application form a disclosure of an applicant's social security number;

8. That the respondents did not promulgate any rules under the rulemaking authority of administrative agencies as provided in Wyoming statutes, with regard to the matter before the Court;

9. That this matter was submitted to the Court on a stipulated set of facts and there were no other hearings or facts before

the Court upon which findings can be made except by the stipulation in the file;

10. That this Court entered an Order on July 11, 1980, which permitted relator to operate a motor vehicle pending the final determination of this matter on the merits;

11. That §31-7-119(b), W.S., 1977 Republished Edition, allows the Division to require the applicant to consent to the Division obtaining records dealing with the applicant's qualifications to safely operate a motor vehicle;

12. That the relator is a party beneficially interested in this matter; that relator has no adequate remedy at law, and that he is entitled to the entry of a peremptory writ of mandamus.

IT IS THEREFORE ORDERED that judgment be, and the same is hereby, entered in favor of the relator and against the respondents and that a Writ of Peremptory Mandamus is granted; and

IT IS FURTHER ORDERED that the Clerk of this Court shall issue a peremptory writ of mandamus directed to the respondents ordering and directing them to issue a driver's license to relator without placement of relator's social security number on the license.

IT IS FURTHER ORDERED that relator's claim for damage be, and the same is hereby denied and that relator shall recover his costs herein incurred.

Done in open court this 24th day of June, 1981.

STATE OF WYOMING COUNTY OF LARAMIE SS. CERTIFICATE

I Gertie E. Bishop, Clerk of the District Court in and for Laramie County [illegible] do hereby certify that the foregoing is a full true and [illegible] of the original thereof as the same remains in the office of record [illegible] that the same is in full force and effect as of this date.

Witness my hand and seal of said court this 24 day of June, 19 81

GERTIE E. BISHOP
Clerk of District Court

JUDGE

No. 81-6912

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1982

DAVID J. SCHOLL, Appellant,

v.

RUDOLPH ANSELMI, et al

ON APPEAL FROM THE SUPREME COURT OF
THE STATE OF WYOMING

TRAVERSE TO MOTION TO DISMISS OR AFFIRM

DAVID J. SCHOLL, Appellant
Pro Se

P.O. Box 2832
Jackson, Wyoming
83001

TABLE OF AUTHORITIES

28 USC 1257 .....p.3

42 USC 1988 .....p.4

Wyoming Statutes 9-4-102 (b).....p.1

Wyoming Administrative Procedures Act p.1,4

STATEMENT OF THE CASE

The summary of the case presented by the Appellees excludes pertinent facts in the case, and distorts other facts by means of summarizing.

First of the ommissions is that Appellees admitted in the Stipulation of Facts that "no copy of the rule, regulation, memo, or interpretation of the law which the department invoke (sic) against Mr. Scholl ... was on file with the Office of the Secretary of State." The Wyoming Administrative Procedures Act states"

> "No agency rule, order or decision is valid or effective against any person or party, nor may it be invoked for any purpose, until it has been filed with the secretary of state and made available for public inspection as herein under required."
>
> Wyoming Statutes 9-4-102 (b)

Second, the Appellees fail to mention that from the day on which the rule was invoked, the Appellant objected to signing the waiver in question, and continued to object on Constitutional grounds of the right to privacy.

It is important for the court to note that I attempted for a year and a half to obtain administrative relief in this matter - and was ignored by the Appellees.

Third, the Appellees summarize a portion of the Amended Petition for Writ of Mandamus which refers to damages. That summarization has deleted the very detailed explanation of the harm which they caused. That claim included facts which were sworn to by me, the Appellant, before a notary public as being true. Appellees, in their motion to dismiss, make it appear that they have directly quoted the Petition for Writ of Mandamus - however, it is not a full quotation. It is important that the court review that Petition and not accept the Appellees quote as being accurate.

Fourth, the Appellees fail to mention that the Stipulation of Facts specifically referred to documents which are part of the record of this case. Those documents were thus made part of the submitted evidence. They include copies of the numerous and detailed letters written by me to the Appellees explaining my objections to the rules in question and explaining that they were causing me considerable financial

and social hardship, and asking a review by the Appellees of the rule and their decision. The Appellees, therefore, are incorrect in stating that no evidence was submitted to justify my claim for damages.

Fifth, the Appellees claim that no evidence was submitted to prove that I or anyone else was compelled to sign the Information Practice Statement waiver of privacy. However, in their own briefs in the Wyoming courts, they have admitted that a license would be withheld unless it was signed. They have also admitted in those briefs, and in their Motion to Dismiss before this Court that the waiver is absolute, irrevocable, and is not affected by any disclaimer made the the signer.

JURISDICTION

The Appellees are incorrect in arguing that this matter should have been brought as a Petition for Writ of Certiorari. The Wyoming Court has upheld a law which I challenged as being repugnant to the Constitution of the United States - specifically the rule requiring waiver of the right to privacy in order to obtain a driver's license. A rule which has the effect of law can be challenged under 28 USC Section 1257 just as a statute may be challenged. I therefore am entitled to a review of this case as an Appeal.

The Wyoming Courts did decide the validity of the rule in question, and did so explicitly and without regard for the fact that the rule was not adopted in accordance with the provisions of the Wyoming Administrative Procedures Act.

The Appellees try to convince the court that I, the Appellant, never made a request for a hearing to the Appellees. Yet they admit that they know that I did "write letters and place phone calls and make informal personal visits, in abundance, to the DMV offices in the state capital."

It is ludicrous to argue that I was not denied a hearing and due process because I did not demand a hearing. I did demand that the Appellees review my case. They ignored that demand for a year and a half. It would be a mockery of the Constitutional right to due process to say that the right is not violated if it is simply ignored, instead of explicitly denied.

In the Wyoming courts it was found that I was denied a license to which I was fully entitled for a period of one and one half years. The denial of any right or privilege is sufficient to justify award of damages. To deny the award in this case has been a clear injustice which I urge this court to correct.

The Appellees have argued that I consented to their Information Practice Statement. This issue is clearly ripe for a decision by this court. The facts of the case show that I objected to the signing on the day of signing; that I intended and attempted to limit the waiver of privacy with a statement on the form; and that I have since consistently objected to and rescinded any broad permission which the Appellees and the Wyoming Courts have aduced from the signing.

This court is asked to determine whether such a waiver was valid, both in my specific case and generally. And you are asked by the Appellant if such a waiver can ever be revoked- or must remain a permanent, broad, and irre vocable waiver.

As the record of this case will show the court, the Trial Court ruled that the Appellees' rule requiring the waiver was valid and enforceable. That court did not simply refuse to rule on the issue as moot. The Trial Court was upheld by the Wyoming Supreme Court.

Should this Court let the Wyoming Court decision to stand the effects will be:

1. An individual will have been denied a right to which he was entitled, and which he vigorously demanded for a period of one and one half years and the harm cause by that denial will not be remedied by an award of any damages whatsoever;

2. An individual will have been denied due process for the same length of time, with no penalty to those infringing that right;

3. A rule which imposes a broad, blanket, irrevocable waiver of privacy will be held as legally valid regardless of any disclaimer or attempt to modify or revoke the waiver.

4. The Wyoming Administrative Procedures Act will become a hollow letter, allowing the imposition of any rule without following the procedures of that act, simply by the government official or agency claiming that it is a "form".

5. 42 USC 1988 will not be interpreted as Congress intended. Those who must represent themselves, due to lack of financial resources, will be "fair game" for those who violate our rights under color of law. Only those who can afford the services of an attorney, or whose cause is popular with various groups with sufficient resources will derive any protection from 42 USC 1988.

CONCLUSION

This case presents several issues of substance and of a Federal nature both of equity and law.

Therefore the Appellant urges the court to accept this Appeal for full presentation of the arguments in briefs and oral hearings before the Court.

Respectfully submitted this 25th day of July, 1982

David J. Scholl

David J. Scholl, Appellant
Pro Se